

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**





76-1323

ORIGINAL

~~76-8290~~

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P/S

IN THE  
United States Court of Appeals  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

*Appellee,*

*against*

JACKSON D. LEONARD,

*Defendant-Appellant.*

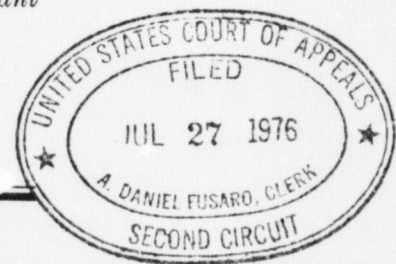
ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF FOR DEFENDANT-APPELLANT,  
JACKSON D. LEONARD**

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7/26/76

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
UNITED STATES OF AMERICA, :  
Appellee, :  
- against - : Docket No. 76-8290  
JACKSON D. LEONARD, :  
Appellant. :  
-----X

BRIEF FOR THE APPELLANT  
JACKSON D. LEONARD

Preliminary Statement

Jackson D. Leonard appeals from a decision of the Honorable Richard Owen, United States District Judge, entered June 24, 1976 in the United States District Court for the Southern District of New York denying a motion for a new trial on the ground of newly discovered evidence.

BACKGROUND

Leonard was charged and convicted, on January 21, 1975, of subscribing to income tax returns for the years 1967 and 1968 which omitted material amounts in violation of 26 U.S.C. §7206(1). He was not charged with tax evasion.

On March 7, 1975, Leonard was sentenced, in substance, to three months imprisonment and fines of \$10,000.

This Court, on August 28, 1975, affirmed his conviction, and, after granting a rehearing, reaffirmed his conviction on November 18, 1975. The Court's affirmance is reported at 524 F.2d 1076 (2d Cir. 1975).

On May 3, 1975, the Supreme Court denied certiorari.

On June 24, 1976, Judge Owen, after a hearing, denied Leonard's motion for a new trial and ordered Leonard to surrender July 9, 1976.\* On July 8, 1976, this Court, by Judge William Hughes Mulligan, denied Leonard's motion for a stay of execution of his sentence.

On July 9, 1976, Leonard surrendered and commenced serving his sentence. He is presently in custody at Allenwood, Pennsylvania. On July 20, 1976, this Court, after a hearing, granted Leonard an expedited appeal: Leonard's brief is required to be filed July 27, 1976; the government's by August 3, 1976 and Leonard's reply brief if any, by August 6, 1976.

#### THE MOTION FOR A NEW TRIAL

The basis for Leonard's motion for a new trial was the discovery, after conviction and appeal; (i) that the government's key witness, Mrs. Eve Brooke, a recently

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\* The date was originally set at July 7th, but was extended to July 9th.



widowed British citizen living in England, had been coerced into testifying against Leonard at the trial as a result of false threats by the government that unless she did she would be "arrested and extradited" from England, and (ii) that the government had failed to disclose and, indeed, had concealed from Leonard's trial counsel the existence of the threats.

The government did not dispute either the accuracy of the witness' charges (which are set forth in the witness' affidavit, obtained in England March 3, 1976 and included in the Appendix at page 17a) that she had been threatened and intimidated by the government, or the importance of her testimony in obtaining Leonard's conviction. Nor did the government dispute that the threats against Mrs. Brooke were not disclosed to Leonard's trial counsel.\*

Notwithstanding, the government contended before the district court that the motion should be denied, inter alia, because Leonard's trial counsel had not discovered the existence of the threats, although given an opportunity to interview Mrs. Brooke before cross-examination, and because Leonard had not proven "foreign law" -- i.e., "that the

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\* Leonard's counsel made a pre-trial request for all exculpatory material under Brady v. Maryland, 373 U.S. 83 (1963) "and/or any evidence favorable to the accused, the existence of which is known or by the exercise of due diligence may become known to the attorney for the government." Appendix, page 8a-9a. The government consented thereto. Appendix, page 15a.

British [-U.S.] treaty relationships...would not have caused her to be extradited and arrested in response to this Court's request\*". See Appendix, page 47a-48a, Transcript Hearing 6/24/76 at page 21.

The district court denied the motion for a new trial, holding (i) that the threats to Mrs. Brooke were "not inappropriate in the circumstances", (ii) that there is nothing which "requires a prosecutor to tell [defense counsel] about trying to get a recalcitrant witness to the Court House who is going to England so she doesn't have to respond to [a] subpoena", (iii) that if defense counsel, who had asked her during the interview about the circumstances surrounding her court appearance, "had pressed around a little more he could have ascertained [the existence of the threats] and (iv) that "in any event, [the threats] would merely be impeaching and...would [not] probably produce a

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\* The government also contended below, in an argument properly disregarded by the district court, that this Court and the Supreme Court had already considered and rejected this contention "on precisely the same arguments and showing." This argument was completely frivolous. Mrs. Brooke's affidavit was first obtained on March 3, 1976, six months after Leonard's conviction was affirmed by this Court on direct appeal (August 28, 1976), three months after this Court granted a re-hearing but re-affirmed the conviction (November 18, 1976) and after a Petition for Certiorari had been filed in the Supreme Court.



different verdict had it been revealed on the trial."

Appendix, page 57a-59a, Hearing Transcript 6/24/76, page 32.

#### THE ISSUES PRESENTED

It will be demonstrated below (i) that the threats made to Mrs. Brooke were false and, at the time they were made, the government knew, or should have known, that they were false and knew or should have known that it lacked power to obtain her "arrest and extradition", and consequently the threats were completely inappropriate; (ii) that there is no evidence in the record that Mrs. Brooke was refusing to comply with a validly issued subpoena calling for her presence at a particular date when the trial was actually to commence or underway; (iii) that Leonard's trial counsel, who had no knowledge of the threats, exercised due diligence but was misled by Mrs. Brooke who withheld from him the frightening circumstances surrounding her testimony, and (iv) that the trial court applied the wrong criteria to the newly discovered evidence; in view of the evidence of the apparent governmental misconduct the correct legal standard is simply whether the newly discovered evidence was "material or favorable to the defense side". Giglio v. United States, 405 U.S. 150 (1972).

STATEMENT OF THE FACTS

Mrs. Brooke's affidavit

The facts, as set forth in Mrs. Brooke's affidavit (Appendix, p. 17a) are as follows: The government first contacted her in November or December 1974, when it served a subpoena on her while she was "winding up [her] late husband's [estate]" in Oklahoma. She was thereafter interviewed in New York and "instructed [by the prosecutor] not to contact Mr. Leonard."

In January 1975, while she was at her home in England, she received calls from the prosecutor who told her he wanted her to "fly to New York to testify against Mr. Leonard and that he had obtained a second subpoena directing me to appear in New York". (Emphasis added)\*

Although she was too ill to travel "as a result of the after-effects of an automobile accident", the prosecutor

\* Mrs. Brooke's affidavit demonstrates that she had not been subpoenaed for trial, but had been told by the prosecutor while she was in England that he had obtained a "second subpoena" for her. The government below did not submit any affidavit disputing this contention and the district court instructed the prosecutor during oral argument not to "supplement the record" with unsworn factual representations. Appendix, page 42a-48a, Transcript 6/24/76, page 21.



insisted. In fact, the prosecutor said that she was a "key witness" and that her "testimony would be crucial". [Emphasis added] Indeed, the prosecutor told her that medical assistance would be furnished, but Mrs. Brooke "repeated" that she would not be able to travel.

Notwithstanding Mrs. Brooke's repeated statements that she was not able to come to the United States and testify, the prosecutor continued to phone her in England and insist that she come. According to Mrs. Brooke, the prosecutor even phoned her doctors in England to confirm the state of her health. Thereafter, she received a call from someone at the American Embassy in London who also told her that she "had to testify" and further "that the U.S. Government was prepared to have a nurse accompany her to New York."

Mrs. Brooke then tried to telephone the prosecutor in New York to tell him that she could not travel. The prosecutor was in court at the time and she spoke instead to a man who said that he was the prosecutor's assistant. The prosecutor's assistant explicitly threatened her and told her that if she "did not come to New York, the United States Government would have me arrested in England and extradited to the United States." (Emphasis supplied) The assistant further threatened that in the future she "would never be

allowed into the United States again."

The next day, the prosecutor again called her insisting that she testify:

"By that time I was exhausted from the daily pressure and terrified that if I failed to come to the United States, I would be subject to arrest and extradition." (Emphasis supplied)

As a result, Mrs. Brooke, who, it must be remembered, had been recently widowed and was therefore extremely vulnerable to threats and intimidation (especially threats by the government) flew to New York. She was called as a witness by the government and testified, but did not "disclose to Leonard's lawyer the circumstances under which she had come to the trial".

#### The Trial

Although the government conceded below the importance of Mrs. Brooke's testimony, a review of the evidence is necessary to appreciate the full impact her testimony had. While a reading of the transcript does not elicit the flavor of the trial at the moment she testified, Leonard's trial counsel submitted an affidavit setting forth his judgment that her testimony was vital to the government's case and devastating to Leonard. Appendix, pages 60a-64a. The government does not dispute this assessment.



- a. The manner in which the government presented evidence of omitted income was confusing to the jury. The proof of "wilfulness", the critical issue at the trial, was equivocal and circumstantial, and, consequently, turned on the credibility of "similar act" evidence.

The indictment charged Leonard with failing to report \$24,168 as adjusted gross income in 1967 and \$58,684 in 1968. While there was substantial evidence that these amounts were omitted from Leonard's returns for those years, the proof of "wilfulness", that Leonard intentionally and knowingly omitted the amounts, was, for the reasons set forth below, circumstantial and equivocal.\* The sufficiency of the proof of "wilfulness", an essential element of a violation of 26 U.S.C. §7206(1), ultimately turned on the credibility of "similar act" evidence and testimony.

\* The monies allegedly omitted from Leonard's 1967 and 1968 federal income tax returns were fees paid by Treadwell Corporation, a company that was doing the detailed engineering work on a chemical plant Leonard had designed for Union Carbide Corporation ("UCC") in Taft, Louisiana. Some of these fees which were for services rendered in connection with supervision of Treadwell's work, were paid directly to Leonard; others were paid to Leonard Process Co., Inc. ("Leonard Corp."), a Subchapter corporation established and owned by Leonard.

In 1967, the omitted income was less than 10% of Leonard's reported adjusted gross income. While the government alleged that the omitted income constituted a significant percentage of reported adjusted gross income in 1968, it was Leonard's position that only

The government's presentation at trial of the evidence involving the allegedly omitted income was very confusing. There were over one hundred trial exhibits, most of which were checks and invoices, resulting in substantial confusion as to which amounts from Union Carbide Corporation ("UCC") Leonard had actually reported, which amounts Leonard had not been required to report (the UCC engineering fees passed on by Leonard to Treadwell) and which amounts Leonard

(footnote continued from previous page...)

- \* \$6,229.20 had been improperly omitted and that the balance of the unreported income had been omitted from his personal tax returns because of his and his accountant's belief, however mistaken, that since Leonard had assigned the UCC contract to Leonard Corp. as of February, 1968, payments due on the UCC contract from February 1, 1968 on belonged to Leonard Corp., rather than Leonard personally, and did not have to be reported on Leonard's own 1968 return.

Significantly, although this Court rejected Leonard's contention that as a matter of tax law he had no duty to report the monies received by Leonard Corp., the Court did indicate that on the facts presented:

"the jury could find a lack of wilfulness in failing to report these payments in his personal income tax returns". U.S. v. Leonard, 524 F.2d 1076, 1084 (2d Cir. 1975).



had allegedly improperly omitted. Indeed, in the relevant period, Leonard had received checks totalling approximately \$1,661,341.61 from UCC: \$911,341.61 was properly passed on to Treadwell and resulted in a complete "wash" and no tax; and \$750,000 was reported by Leonard on his 1967 and 1968 personal return and in his fiscal 1968/1969 Subchapter S Corporation informational return. See Appendix, pages 63a-64a, affidavit of trial counsel.

Yet the only amounts the jury could properly have found that Leonard had omitted were the monies paid back over to him by Treadwell which constituted less than 10% of Leonard's reported adjusted gross income for 1967 and, assuming his Subchapter S Corporation was properly on a fiscal year basis, less than 5% of his reported adjusted gross income for 1968.

Whatever confusion these figures and the voluminous exhibits may have created with the jury was compounded by the fact that the government failed to produce any charts explaining and summarizing what all these checks (some going to Leonard, some then on to Treadwell and still others back to Leonard) ultimately meant and, more importantly, precisely which checks the government claimed to have been omitted.

Consequently, the question of Leonard's "wilfulness" was the critical issue at trial. Leonard's trial counsel went so far as to state at one point that "I think in this case Your Honor, the only issue will be wilfulness" (Trial Transcript 312). On the direct appeal to this Court, the government asserted in its brief that this was "Leonard's central defense" - a claim that "he lacked wilfulness in understanding his returns". (Government Brief pages 29-30).

b. The "similar act" proof

The government did not attempt to prove "wilfulness" directly but instead sought to do so circumstantially, by establishing that Leonard had made false statements to the government on other occasions concerning foreign bank accounts. The two "similar acts" it tried to prove were Leonard's execution of an affidavit which allegedly falsely stated that he had no foreign accounts and had no material transactions with foreign banks (the "Swiss bank affidavit"), and his allegedly false statement in his 1971 federal income tax return that in 1971 (some four years after the 1967 and 1968 returns were filed) he had no foreign bank account.



While the government's presentation of the evidence on the omitted income had been confusing, what was easy for the jury to understand was that the government accused Leonard of lying about not having a Swiss bank account. This issue, more than any other, colored the jury's view of the case and made Mrs. Brooke's testimony so significant and so damaging. Appendix, pages 64a-65a.

The Swiss bank affidavit, drafted by the government, provided, in the pertinent part:

"(1) I do not now and I have not had any foreign bank accounts; and

(2) I have not had any transactions or dealings of any nature with any foreign banks or other representatives except for (specified loans in Australia and currency conversions)"

The principal evidence the government adduced to prove its falsity was receipt by Leonard of official checks from a Chase Manhattan Bank forwarded to him at the instructions of a Swiss bank.

On the direct appeal of this case this Court acknowledged in its opinion that there was insufficient evidence to establish that Leonard himself had maintained the account in Switzerland. U.S. v. Leonard, supra at 1090. In fact, this Court further stated that Leonard, had his

had his trial counsel requested, would have been entitled to an instruction that the jury could not find the first portion of the affidavit (dealing with whether Leonard had a foreign account) false. Id. at 1090.

Moreover, the government's proof that Leonard had "transactions" with a Swiss bank was also equivocal at best. While this Court rejected Leonard's contention that his dealings were solely with Chase Manhattan, a domestic bank, and not with a Swiss bank, and that the affidavit was consequently not literally false, this Court conceded that the critical question was whether Leonard knew the money came from a foreign bank. Id. at 1090.

Since there was no direct evidence of Leonard's knowledge, but only surmise, based on the amount and number of transactions involved, one of the two "similar acts" used as the basis for the inference of "wilfulness" was itself based on inference, rather than on direct evidence. Id. at 1090.

Consequently, when Mrs. Brooke, the widow of a former colleague of the defendant, testified that she had heard Leonard, in 1971, say that he had a Swiss bank account and offer to pay her husband money in a Swiss account, a statement wholly inconsistent with Leonard's declaration on



his 1971 income tax return, her testimony had an absolutely devastating effect. See Appendix, page 86a et seq.

While Leonard's cross examination of Mrs. Brooke challenged the accuracy of her testimony and sought to establish some motive for it, the focus of this cross-examination was on her possibly having been influenced by the Kerr-McGee Chemical Corp. ("Kerr-McGee") to give damaging testimony against Leonard. Mrs. Brooke was at that time receiving a pension from Kerr-McGee and Kerr-McGee and Leonard were, and still are, engaged in extensive civil litigation instituted by Leonard in the Southern District of New York involving millions of dollars and the allegation that Kerr-McGee had improperly misappropriated his design of a chemical plant. Leonard v. Kerr-McGee Chemical Corp., 72 Civ. 936 (IBW). Appendix, at page 75a et seq.

In fact, unbeknownst to Leonard, his cross-examination was off-target. As Mrs. Brooke's affidavit demonstrates, her testimony and very presence at trial had been tainted by governmental threats rather than by Kerr-McGee officials.

## ARGUMENT

### POINT I

THE THREATS MADE TO MRS. BROOKE WERE FALSE AND, AT THE TIME THEY WERE MADE, THE GOVERNMENT KNEW OR SHOULD HAVE KNOWN THAT THEY WERE FALSE AND THAT IT LACKED AUTHORITY TO OBTAIN THE "ARREST AND EXTRADITION" OF MRS. BROOKE, WHO WAS COMPLETELY INNOCENT OF ANY WRONGDOING.

1. The defendant's discovery of possible threats against Eve Brooke

Leonard's first indication that Eve Brooke might have been improperly influenced by threats made by the government (rather than by Kerr-McGee) was after his conviction and after sentence, when the government filed as part of the record on appeal a Letter Rogatory it had obtained ex parte during trial. See Appendix 22a et seq.

The Letter Rogatory requested that an English Court "enter and order" compelling Eve Brooke to travel to New York "as soon as physically possible" to testify at trial, and that the English Court take "such other steps" (such as arrest and extradition) that may be necessary in order to secure compliance with [its] orders." [Emphasis added]. This was an extraordinary request and one of ex-



tremely dubious legality.\*

Moreover, there is no proof that the government properly filed the Letter Rogatory in any English court.

Furthermore, the government not only did not disclose this information to Leonard; its actions were such as to give rise to the clear inference that it deliberately sought to keep him from learning, until after the trial, of the extreme and improper pressure applied to Mrs. Brooke.

Application by the government to the District Court for issuance of the Letter Rogatory was ex parte, and wholly unknown to Leonard. Since there was no legitimate need for such secrecy -- Leonard, after all, was charged with tax fraud, not a violent crime, and there was no reason for the government to fear that he would seek to injure or

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\*The only English authorities explicitly relied on in the Letter Rogatory in support of this extraordinary request (compare 28 U.S.C. §§1781-1783, 1696), the British Tribunals Evidence Act of 1856 and the British Extradition Act of 1870, are completely irrelevant. The Foreign Tribunals Evidence Act of 1856 (Addendum C) covers only civil matters and simply gives English Courts the power to take testimony in England at the request of a foreign court. The Extradition Act of 1880 (Addendum D) merely permits the taking of testimony for a criminal case pending in a foreign court in the same manner as provided by the Foreign Tribunal's Evidence Act of 1856.

In short, neither act cited in the Letter Rogatory supported the request that Mrs. Brooke be arrested and extradited to testify in the United States. Indeed, both acts establish that the request inherently lacked merit, which indicates that the government knew or should have known that it lacked authority for its request.

intimidate Mrs. Brooke, who testified that she had been a friend of Leonard for years -- and since, even after Leonard's counsel accidentally became generally aware during trial that there were ex parte discussions with the Court (though not the subject thereof), the government declined to advise Leonard of their nature, the conclusion is strong that the government consciously and deliberately kept from Leonard its attempt to obtain Mrs. Brooke's testimony by improper means.

As a consequence of the post-trial discovery of the Letter Rogatory, Leonard raised in this Court on direct appeal the question whether the government had knowingly and deliberately misused the Letter Rogatory to coerce and intimidate Mrs. Brooke, a British citizen and resident, to come to the United States from England to testify against Leonard. However, this Court rejected Leonard's argument, both because it had not been "raised below" and because there was no support for Leonard inferences of governmental misconduct. Id. at 1093

The issue, with all due respect to this Court's prior opinion, could not have been raised at the time of trial because, as noted, the Letter Rogatory had been obtained by the government ex parte, and Mrs. Brooke was presented as a "surprise" witness. Leonard's trial counsel learned of her



appearance only an hour before she testified, and although Leonard was given an opportunity to interview her after her direct testimony, she withheld the threatening circumstances under which she was testifying.

Mrs. Brooke's affidavit, however, more than satisfies this Court's prior complaint that there was no hard evidence of governmental misconduct.

2. The U.S. - British Extradition Treaty  
is the law of the land

The government's contention below that Leonard had failed to prove "foreign law" - i.e. that the British - United States Extradition Treaty did not provide for arrest and extradition in these circumstances is frivolous. The Extradition Treaty between the United States and Britain, Addendum B, was approved by Congress and therefore constitutes the law of the land. 42 Stat. 2122. Article VI, U.S. Constitution, Addendum A. The Treaty makes no provision for "arrest and extradition" of British subjects who refuse to appear in the United States courts, even if under proper subpoena.

Accordingly, it is apparent that the prosecutor's office knew or should have known at the time it threatened Mrs. Brooke that the government lacked authority to "arrest and extradite" a person in her circumstances.

POINT II

THERE IS NO EVIDENCE BELOW THAT MRS.  
BROOKE WAS REFUSING TO COMPLY WITH  
VALIDLY ISSUED SUBPOENA CALLING FOR  
HER PRESENCE AT A PARTICULAR DATE  
WHEN THE TRIAL WAS UNDERWAY

Mrs. Brooke states that she was subpoenaed in November or December 1974 from Oklahoma, where she was wrapping up her late husband's affairs, to New York and interviewed there by the prosecutor. She makes no mention of receiving a second subpoena. Thereafter, during one of the government's numerous calls to her in England, according to her affidavit, the prosecutor mentioned for the first time that he had obtained a "second subpoena" requiring her attendance at trial. The government below did not challenge the accuracy or the completeness of Mrs. Brooke's affidavit.

If Mrs. Brooke had been served with a "second subpoena" requiring her appearance at trial before her departure for England in December 1974, there would obviously have been no need for the prosecutor to have advised her by phone in England that he had obtained a "second subpoena" requiring her appearance in New York on threat of "arrest and extradition."

Additionally, the prosecutor saw Mrs. Brooke only in November or December 1974, when the trial had been scheduled for December but was thereafter postponed.



Since the trial was postponed a number of times thereafter, it is inconceivable that Mrs. Brooke had been served with a proper trial subpoena calling for her appearance on January 13, 1975, when the trial eventually began.

Accordingly, in the absence of an affidavit or testimony by the prosecutor which contradicts Mrs. Brooke's affidavit, there is simply no factual basis in the record to support the District Court's conclusion that Mrs. Brooke had been subpoenaed for trial but had been a recalcitrant witness, legally obligated to appear at trial.\*

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\*At the oral argument on June 24, 1976 before the District Court below (despite the Court's instructions to the government not to supplement the record (Appendix, page 47a)), the prosecutor made a representation to the Court as follows:

"She was served with a trial subpoena in Oklahoma and it may be, I think were having a succession of continued trial dates, that I served her again with a second trial subpoena on the occasion of her interview in my office in New York City." Transcript 6/24/76, page 5 [Emphasis added] (Appendix, page 31a).

It is apparent that the prosecutor was merely speculating as to what "may" have occurred; he makes no representation that he actually did serve her with a second subpoena (until possibly she came back to New York from England as a result of the threats). In any event, the prosecutor's mere speculation (in light of Mrs. Brooke's unequivocal affidavit) is simply not an adequate foundation for the District Court's finding that Mrs. Brooke had been under a valid subpoena at the time of the threats.

POINT III

LEONARD'S TRIAL COUNSEL, WHO HAD NO KNOWLEDGE OF THE THREATS, EXERCISED DUE DILIGENCE. HE WAS MISLED BY MRS. BROOKE WHO, APPARENTLY INTIMIDATED BY THE GOVERNMENT'S THREATS, WITHHELD THE FRIGHTENING CIRCUMSTANCES SURROUNDING HER TESTIMONY

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The government claimed below that Leonard's trial counsel had a "perfect opportunity" to ask Mrs. Brooke "whether her appearance was voluntary" and that trial counsel had failed to exercise "due diligence." This contention is frivolous.

At the conclusion of Mrs. Brooke's direct testimony on January 16, 1975 and prior to her cross-examination, Leonard's trial counsel was given an opportunity to interview her, which he did in the courthouse on that afternoon. During the course of the interview, he asked Mrs. Brooke "how it was she came to testify at Mr. Leonard's trial." She responded innocuously that she had been subpoenaed and that the Government paid her airfare from London.

During the course of Mrs. Brooke's testimony and during the interview, she appeared to be close to tears and was obviously emotionally upset. Leonard's trial counsel thought Mrs. Brooke was upset because of the recent death of her husband which was the reason he neither questioned



her on this score nor pressed her further during the interview and cross-examination. Appendix, page 65a.

Similarly, when Mrs. Brooke testified at trial on cross-examination about how she came to testify, she did not disclose that she had been coerced:

"Q. Now when you were asked to testify in this case, you called an attorney, did you not?

A. Yes.

Q. And was that one of Kerr McGee's attorneys?

A. No. It was my own private attorney.

Q. And what was his name?

A. John Edwards [a trust and estate attorney from Oklahoma working on her husband's will].

Q. And then thereafter you called the attorney for Kerr McGee, did you not?

A. On a friendly basis. He is a personal friend. Mr. Robert Walsh.

Q. And Mr. Robert Walsh is one of the attorneys who is handling the litigation which we call Leonard versus Kerr McGee, is that right?

A. He is.

Q. And he was the attorney who showed you the depositions of Mr. Leonard?

A. Part of it.

Q. And he told you that you should come and give as much cooperation in this case as was necessary under the

circumstances, did he not?

A. He said that he would leave it completely to me. But since I was subpoenaed, I felt that I should appear.

Q. Yes. And in addition to that he told you, did he not, "Come to New York and give as much cooperation as necessary under the circumstances."

A. He didn't tell me.

Q. He said that, though, did he not?

A. He just said, "If you feel that you have to, then go."  
[Emphasis added] (A 547-48).

Consequently, Leonard's trial counsel simply had no reason to suspect governmental misconduct, and had no reason to have pressed Mrs. Brooke for any further explanation of her presence at the trial.

Moreover, the secrecy with which the government surrounded its efforts to obtain an improper Letter Rogatory to compel Mrs. Brooke to testify both lends support to Mrs. Brooke's charges and suggests that the government deliberately tried to conceal from defendant the circumstances surrounding her court appearance.

In short, the government's intimidation of Mrs. Brooke was so successful that she "slanted" her trial testimony and



statements to Leonard's trial counsel to conceal that she had been subjected to and was testifying under governmental threats.

#### POINT IV

THE DISTRICT COURT APPLIED THE  
WRONG LEGAL STANDARD; IN VIEW  
OF THE EVIDENCE OF GOVERNMENTAL  
MISCONDUCT, THE NEWLY DISCOVERED  
EVIDENCE NEED BE ONLY "FAVORABLE  
OR MATERIAL TO THE DEFENSE SIDE."  
UNDER THE PROPER STANDARD, LEONARD  
IS ENTITLED TO A NEW TRIAL

#### 1. The general rule

The general rule is that a motion for a new trial will be granted only if the defendant is able to demonstrate that the evidence:

- (1) was discovered after trial;
- (2) with the exercise of due diligence, would not have been disclosed sooner;
- (3) must not be merely cumulative or impeaching;
- (4) must be material to the issues involved; and
- (5) must be such as on a new trial will probably produce a different verdict.

United States v. Slutsky, 514 F.2d 1222 (2d Cir. 1975),

United States v. Zane, 507 F.2d 346 (2d Cir. 1974).\*

However, in cases involving prosecutorial neglect or misconduct, a lower standard is applied. Giglio v.

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\* This general rule was recently applied by the Supreme Court in United States v. Agurs, 44 U.S.L.W. 5013, June 24, 1976 in a case which did not involve any governmental misconduct. In Agurs, the question was simply whether the government had the obligation, in a murder self-defense case, to voluntarily disclose that the victim had a criminal record, where the defendant had not requested the information. The Court held that, in the absence of governmental misconduct, the prosecutor had no such duty.



United States, 405 U.S. 150 (1972), United States v. Morell, 524 F.2d 550 (2nd Cir. 1975), United States v. Seijo, 514 F.2d 1357 (2nd Cir. 1975) and United States v. Kahn 472 F.2d 272 (2nd Cir. 1973):

"If it can be shown that the government deliberately suppressed the evidence, a new trial is warranted if the evidence is merely material or favorable to the defense. The same rule applies, even in the absence of intentional suppression, if it appears that the high value of the undisclosed evidence could not have escaped the prosecution...

"If the government's nondisclosure is merely inadvertent and does not involve evidence whose high value to the defense could not have escaped notice, however, a somewhat stronger burden is put on the defendant. While the movant is still not required to show the probability of a different verdict upon retrial, setting aside a conviction is only called for when there is 'a significant chance that this added item, developed by skilled counsel as it would have been could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction.'" (Citations omitted) [Emphasis added].

The newly discovered evidence relied on by Leonard more than satisfies these tests.

2. Eve Brooke's affidavit clearly demonstrates government misconduct

Mrs. Brooke has sworn in her affidavit that her testimony and presence at trial were coerced by the government through false threats of arrest and extradition.

The government does not dispute these charges.

Although made under the color of law, as stated above, the coercion was illegal and improper.

No disclosure of the threats was made to Leonard's trial counsel,\*

3. The significance of this new evidence

Mrs. Brooke's testimony was crucial to the government's case. The government, according to Mrs. Brooke's affidavit, told her that she was the "key witness" whose testimony was "crucial." This analysis has not been disputed below by the government and is clearly correct.

The evidence that Leonard had wilfully omitted income from his returns was thin and confusing and was

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\* In the light of the government's efforts to keep Leonard from discovering the methods it used to obtain Mrs. Brooke's testimony, it is obvious that Leonard's failure to discover the prosecutor's misconduct until after the trial was completed is not a reflection on trial counsel's due diligence.



presented to the jury in a confusing manner. On the other hand, what was easy for the jury to have understood was that the government accused Leonard of lying when he denied having a Swiss bank account. This issue more than any other colored the jury's view of the case and made Mrs. Brooke's testimony so significant and so damaging.

4. The effect of the government's failure to disclose that Mrs. Brooke's testimony was coerced

The government's failure to bring the threats either to the district court's or Leonard's counsel's attention so deprived Leonard of the opportunity for full cross-examination of the government's key witness as to justify, on that fact alone, reversal of the conviction.

This Court, in United States v. Miller, 411 F2d 825 (2d Cir. 1969), reversed and granted a new trial in an analogous situation. There, prior to trial, the prosecutor had a main government witness hypnotized in an effort to refresh the witness' recollection of a license plate number, not directly related to the defense, and had failed to disclose the hypnosis to defense counsel. Judge Friendly wrote:

"While we do not think the hypnosis evidence would meet the [general rule requirements of "probably" producing a different verdict], we find it unnecessary to decide

this or to consider whether the [weaker test]... is ever applicable in the ordinary case of evidence newly discovered by the defense. For we think developments during the trial placed a duty on the Government to disclose the hypnosis; that, where such a duty has not been discharged, a motion for a new trial must be granted if there is a significant possibility that the undisclosed evidence might have led to an acquittal or a hung jury; and that such a possibility exists here." [Emphasis added] Id. pages 830-831.

At trial, Leonard vigorously disputed Mrs. Brooke's testimony. Leonard's trial counsel, in cross-examination, challenged her credibility and pointed out inconsistencies in the affidavit she had handwritten, which made no mention of Leonard's allegedly having a Swiss bank account, and an affidavit drafted by Kerr-McGee lawyers (for the Leonard v. Kerr-McGee litigation) which contained such a claim.

In summation, Leonard's counsel argued that her testimony was not worthy of belief, because she was a "widow . . . taken advantage by . . . the lawyers for Kerr-McGee," a company Leonard had sued for millions of dollars as a result of information given by Mrs. Brooke's late husband (who had been an officer of Kerr-McGee), that Kerr-McGee had misappropriated Leonard's design of a chemical plant. See a copy of the complaint filed in the Southern District of New York, Appendix page 75a. Leonard's counsel also argued that she was " . . . bitter, pretty bitter" about the fact that a deposition of her



husband in that case had been taken literally 48 hours before he died, a circumstance for which she blamed Leonard. See Appendix 66a et seq., excerpts from Leonard's counsel's summation.

Ignorant of the threats, Leonard's trial counsel had simply misjudged what was motivating her to give such damaging testimony. Under these circumstances, it is simply not realistic to assume that the content of her testimony was completely unaffected by these threats. As noted previously in Point III, Mrs. Brooke slanted her answers in response to Leonard's trial counsel's questions prior to and during the trial as to how she happened to come to testify. As Leonard's trial counsel also pointed out, throughout his interview and her testimony, she was constantly on the verge of tears. Appendix page 65a.

As this Court stated in United States v. Miller,  
supra:

"Here, as we have noted, the defense already possessed an abundance of impeaching material, the hypnosis incident seems without much force apart from the elaboration by the defense's psychiatric experts, and we have our own views how seriously a jury of Connecticut Yankees would have been likely to regard that. Still, as the record stands, the hypnosis had arguably placed at least some obstacle in the way of one of the most valuable protections accorded Miller by the Sixth Amendment--

the possibility that the sanctity of the oath and effective cross-examination might lead Caron to recant his identification or at least admit doubt. The defense could and very likely would have made this the capstone of its attack on the crucial witness for the prosecution--with what effect we cannot confidently say. Under all the circumstances, as Judge Swan wrote in Consolidated Laundries, supra, 291 F.2d at 571, 'we are content to rest our decision on our conviction that the denial of a new trial here is inconsistent with the correct administration of criminal justice in the federal courts, which it is our duty as an appellate court to supervise.'" Id. at 832

Further, while this Court in United States v. Miller, supra, reached this result "with some reluctance," because of "the considered belief of the able and conscientious district judge...of the correctness of the jury's verdict," the Court stated:

"The test, however, is not how the newly discovered evidence concerning the hypnosis would affect the trial judge or ourselves but whether, with the Government's case against Miller already subject to serious attack, there was a significant chance that this added item, developed by skilled counsel as it would have been, could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction. We cannot conscientiously say there was not." Id. at 832

Mrs. Brooke was a "surprise" and indeed the last government witness. Leonard, unlike Miller, did not have "an



abundance of impeaching material." The improper and undisclosed threats by the government clearly placed, in Judge Friendly's words, an "obstacle in the way of one of the most valuable protections accorded [Leonard] by the Sixth Amendment--the possibility that the sanctity of the oath and effective cross-examination" might have led Mrs. Brooke "to recant[her] testimony or at least to admit doubt". There is no question that the defense "could and would likely have made the threats the capstone of its attack on the crucial witness for the prosecution," whose importance is conceded by the government.

In United States v. Badalamente, 507 F.2d 12 (2nd Cir. 1974), a case strikingly analogous to the instant litigation, this Court reversed a conviction and ordered a new trial where a key government witness sent two letters to the trial judge, prior to trial, alleging that he was under extreme pressure by the government to testify, and that information was not disclosed to the defendant's counsel until after trial. As this Court noted, while it could not tell whether it was true whether the witness had indeed been threatened, or whether he was a liar or deranged, "any one [of these] would have a powerful adverse affect on [the witness'] credibility." Id. at 17.

Consequently, Mrs. Brooke's charges more than satisfy the test stated in Giglio v. United States, United States v. Morell, United States v. Seijo and United States v. Kahn, supra.

Under these circumstances, the denial of a new trial is inconsistent with this Court's duty to supervise the correct administration of criminal justice in the federal courts. Id. at 832.

#### CONCLUSION

The judgment of conviction should be reversed and Leonard granted a new trial.

Respectfully submitted,

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EDITOR'S NOTE

Pages 35 were missing at time of filming. If, and  
when obtained, a corrected fiche will be forwarded to you.

ADDENDA



## ADDENDUM A

## Article VI U.S. Constitution

## ARTICLE VI

All debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law, of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## ADDENDUM B - U.S. - Great Britian Extradition Treaty.

47 Stat. 2122; TS 849

## 2122 EXTRADITION TREATY—GREAT BRITAIN. DECEMBER 22, 1931.

December 22, 1931. *Extradition Treaty between the United States of America and Great Britain and exchanges of notes extending the applicability of the Treaty to Palestine and Trans-Jordan. Signed at London, December 22, 1931; ratification advised by the Senate of the United States, February 19, 1932; ratified by the President of the United States, March 3, 1932; ratified by Great Britain, July 29, 1932; ratifications exchanged at London, August 4, 1932; proclaimed, August 9, 1932.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

## A PROCLAMATION

Extradition with  
Great Britain.  
Preamble.

WHEREAS an extradition treaty between the United States of America and Great Britain was concluded and signed by their respective Plenipotentiaries at London on December 22, 1931, the original of which treaty is word for word as follows:

Contracting Powers.

THE President of the United States of America,  
And His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India;  
Desiring to make more adequate provision for the reciprocal extradition of criminals,

Plenipotentiaries.

Have resolved to conclude a Treaty for that purpose, and to that end have appointed as their plenipotentiaries:

The President of the United States of America:

General Charles G. Dawes, Ambassador Extraordinary and Plenipotentiary of the United States of America at the Court of St. James;

And His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India:

for Great Britain and Northern Ireland:

The Right Honourable Sir John Simon, G.C.S.I., M.P., His Principal Secretary of State for Foreign Affairs;

who, having communicated their full powers, found in good and due form, have agreed as follows:—

## ARTICLE 1.

Reciprocal delivery  
of persons charged with  
specified crimes.

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article 3, committed within the jurisdiction of the one Party, shall be found within the territory of the other Party.

## ARTICLE 2.

Territorial jurisdic-  
tion.

For the purposes of the present Treaty the territory of His Britannic Majesty shall be deemed to be Great Britain and Northern Ireland, the Channel Islands and the Isle of Man, and all parts of His Britannic Majesty's dominions overseas other than those



## ADDENDUM B.

## EXTRADITION TREATY—GREAT BRITAIN. DECEMBER 22, 1931. 2123

enumerated in Article 14, together with the territories enumerated in Article 16 and any territories to which it may be extended under Article 17. It is understood that in respect of all territory of His Britannic Majesty as above defined other than Great Britain and Northern Ireland, the Channel Islands, and the Isle of Man, the present Treaty shall be applied so far as the laws permit.

*Post*, pp. 2122, 2123.

For the purposes of the present Treaty the territory of the United States shall be deemed to be all territory wherever situated belonging to the United States, including its dependencies and all other territories under its exclusive administration or control.

## ARTICLE 3.

Extradition shall be reciprocally granted for the following crimes or offences:—

Extraditable crimes.

- |  |                                     |
|--|-------------------------------------|
| 1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.  | Murder.                             |
| 2. Manslaughter  | Manslaughter.                       |
| 3. Administering drugs or using instruments with intent to procure the miscarriage of women.   | Procuring miscarriage.              |
| 4. Rape.   | Rape.                               |
| 5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge, of a girl under 16 years of age.   | Unlawful carnal knowledge.          |
| 6. Indecent assault if such crime or offence be indictable in the place where the accused or convicted person is apprehended.  | Indecent assault.                   |
| 7. Kidnapping or false imprisonment.   | Kidnapping.                         |
| 8. Child stealing, including abandoning, exposing or unlawfully detaining.   | Child stealing, etc.                |
| 9. Abduction.  | Abduction.                          |
| 10. Procuration: that is to say the procuring or transporting of a woman or girl under age, even with her consent, for immoral purposes, or of a woman or girl over age, by fraud, threats, or compulsion, for such purposes with a view in either case to gratifying the passions of another person provided that such crime or offence is punishable by imprisonment for at least one year or by more severe punishment. | Procuration.                        |
| 11. Bigamy.  | Bigamy.                             |
| 12. Maliciously wounding or inflicting grievous bodily harm.   | Assault.                            |
| 13. Threats, by letter or otherwise, with intent to extort money or other things of value.   | Blackmail, etc.                     |
| 14. Perjury, or subornation of perjury.  | Perjury.                            |
| 15. Arson.   | Arson.                              |
| 16. Burglary or housebreaking, robbery with violence, larceny or embezzlement.   | Burglary, etc.                      |
| 17. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion.   | Fraud.                              |
| 18. Obtaining money, valuable security, or goods, by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.  | Obtaining money by false pretences. |
| 19.—(a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.   | Counterfeiting.                     |
| (b) Knowingly and without lawful authority making or having in possession any instrument, tool, or engine adapted and intended for the counterfeiting of coin.   |                                     |

## ADDENDUM B.

## 2124 EXTRADITION TREATY—GREAT BRITAIN. DECEMBER 22, 1931.

- |                                       |   |
|---------------------------------------|---|
| Forgery.                              | 20. Forgery, or uttering what is forged.  |
| Bankruptcy law violations.            | 21. Crimes or offences against bankruptcy law.  |
| Bribery.                              | 22. Bribery, defined to be the offering, giving or receiving of bribes.   |
| Endangering safety of railway travel. | 23. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.  |
| Traffic in dangerous drugs.           | 24. Crimes or offences or attempted crimes or offences in connection with the traffic in dangerous drugs.   |
| Property damages.                     | 25. Malicious injury to property, if such crime or offence be indictable.   |
| Piracy.                               | 26.—(a) Piracy by the law of nations.   |
| Mutiny, etc.                          | (b) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas with intent to do grievous bodily harm. |
| Slave trading.                        | 27. Dealing in slaves.  |

## Accessories.

Extradition is also to be granted for participation in any of the aforesaid crimes or offences, provided that such participation be punishable by the laws of both High Contracting Parties.

## ARTICLE 4.

## Prior, etc., offenses.

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the territories of the High Contracting Party applied to, for the crime or offence for which his extradition is demanded.

If the person claimed should be under examination or under punishment in the territories of the High Contracting Party applied to for any other crime or offence, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

## ARTICLE 5.

## Time limitation.

The extradition shall not take place if, subsequently to the commission of the crime or offence or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the High Contracting Party applying or applied to.

## ARTICLE 6.

## Political crimes.

A fugitive criminal shall not be surrendered if the crime or offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for a crime or offence of a political character.

## ARTICLE 7.

## Trial limited to offences for which surrendered.

A person surrendered can in no case be kept in custody or be brought to trial in the territories of the High Contracting Party to whom the surrender has been made for any other crime or offence, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the territories of the High Contracting Party by whom he has been surrendered.

This stipulation does not apply to crimes or offences committed after the extradition.



## ADDENDUM B.

## EXTRADITION TREATY—GREAT BRITAIN. DECEMBER 22, 1931. 2125

## ARTICLE 8.

The extradition of fugitive criminals under the provisions of this Treaty shall be carried out in the United States and in the territory of His Britannic Majesty respectively, in conformity with the laws regulating extradition for the time being in force in the territory from which the surrender of the fugitive criminal is claimed.

Extradition to conform with existing laws.

## ARTICLE 9.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the High Contracting Party applied to, either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the territory of such High Contracting Party, or to prove that the prisoner is the identical person convicted by the courts of the High Contracting Party who makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the High Contracting Party applied to.

Conditions imposed.

## ARTICLE 10.

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed within their respective jurisdictions, his extradition shall be granted to the Power whose claim is earliest in date, unless such claim is waived.

Persons claimed by other countries.

## ARTICLE 11.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the High Contracting Party applied to, or the proper tribunal of such High Contracting Party, shall direct, the fugitive shall be set at liberty.

Time limitation.

## ARTICLE 12.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, and any articles that may serve as a proof of the crime or offence shall be given up when the extradition takes place, in so far as this may be permitted by the law of the High Contracting Party granting the extradition.

Articles seized with fugitive.

## ARTICLE 13.

All expenses connected with the extradition shall be borne by the High Contracting Party making the application.

Expenses.

## ARTICLE 14.

His Britannic Majesty may accede to the present Treaty on behalf of any of his Dominions hereafter named—that is to say, the Dominion of Canada, the Commonwealth of Australia (including for this purpose Papua and Norfolk Island), the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland—and India. Such accession shall be effected by a notice to that effect given by the appropriate diplomatic representative of His Majesty at Washington which shall specify the authority to which the requisition for the surrender of a fugitive criminal who has taken refuge in the Dominion concerned, or India, as the case may be, shall be addressed. From the date when such notice

Accession by Great Britain.

## ADDENDUM B.

## 2126 EXTRADITION TREATY—GREAT BRITAIN. DECEMBER 22, 1931.

comes into effect the territory of the Dominion concerned or of India shall be deemed to be territory of His Britannic Majesty for the purposes of the present Treaty.

**Requisitions.**

The requisition for the surrender of a fugitive criminal who has taken refuge in any of the above-mentioned Dominions or India, on behalf of which His Britannic Majesty has acceded, shall be made by the appropriate diplomatic or consular officer of the United States of America.

**Separability of designated Dominions, etc.**

Either High Contracting Party may terminate this Treaty separately in respect of any of the above-mentioned Dominions or India. Such termination shall be effected by a notice given in accordance with the provisions of Article 18.

**British mandates.**

Any notice given under the first paragraph of this Article in respect of one of His Britannic Majesty's Dominions may include any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, and which is being administered by the Government of the Dominion concerned; such territory shall, if so included, be deemed to be territory of His Britannic Majesty for the purposes of the present Treaty. Any notice given under the third paragraph of this Article shall be applicable to such mandated territory.

## ARTICLE 15.

**Fugitives in British territory.**

The requisition for the surrender of a fugitive criminal who has taken refuge in any territory of His Britannic Majesty other than Great Britain and Northern Ireland, the Channel Islands, or the Isle of Man, or the Dominions or India mentioned in Article 14, shall be made to the Governor, or chief authority, of such territory by the appropriate consular officer of the United States of America.

Such requisition shall be dealt with by the competent authorities of such territory: provided, nevertheless, that if an order for the committal of the fugitive criminal to prison to await surrender shall be made, the said Governor or chief authority may, instead of issuing a warrant for the surrender of such fugitive, refer the matter to His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland.

## ARTICLE 16.

**Applicability to designated British Protectorates.**

This Treaty shall apply in the same manner as if they were Possessions of His Britannic Majesty to the following British Protectorates, that is to say, the Bechuanaland Protectorate, Gambia Protectorate, Kenya Protectorate, Nigeria Protectorate, Northern Rhodesia, Northern Territories of the Gold Coast, Nyasaland, Sierra Leone Protectorate, Solomon Islands Protectorate, Somaliland Protectorate, Swaziland, Uganda Protectorate and Zanzibar, and to the following territories in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, that is to say, Cameroons under British mandate, Togoland under British mandate, and the Tanganyika Territory.

## ARTICLE 17.

**Extending provisions to other territory.**

If after the signature of the present Treaty it is considered advisable to extend its provisions to any British Protectorates other than those mentioned in the preceding Article or to any British-protected State, or to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, other than those mandated territories mentioned in Articles 14 and 16, the stipulations of Articles 14 and 15 shall be deemed to



## ADDENDUM B.

## EXTRADITION TREATY—GREAT BRITAIN. DECEMBER 22, 1931. 2127

apply to such Protectorates or States or mandated territories from the date and in the manner prescribed in the notes to be exchanged for the purpose of effecting such extension.

## ARTICLE 18.

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months.

In the absence of an express provision to that effect, a notice given under the first paragraph of this Article shall not affect the operation of the Treaty as between the United States of America and any territory in respect of which notice of accession has been given under Article 14.

The present Treaty shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

On the coming into force of the present treaty the provisions of Article 10 of the treaty of the 9th August, 1842, of the Convention of the 12th July, 1889, of the supplementary Convention of the 13th December, 1900, and of the supplementary Convention of the 12th April, 1905, relative to extradition, shall cease to have effect, save that in the case of each of the Dominions and India, mentioned in Article 14, those provisions shall remain in force until such Dominion or India shall have acceded to the present treaty in accordance with Article 14 or until replaced by other treaty arrangements.

In faith whereof the above-named plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in duplicate at London this twenty-second day of December, 1931.

[SEAL]

CHARLES G DAWES

[SEAL]

JOHN SIMON

AND WHEREAS, the said treaty has been duly ratified on both parts, and the ratifications of the two Governments were exchanged at London on the fourth day of August, one thousand nine hundred and thirty-two;

Now, THEREFORE, be it known that I, Herbert Hoover, President of the United States of America, have caused the said treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this ninth day of August in the year of our Lord one thousand nine hundred and thirty-two, and of the Independence of the United States of America the one hundred and fifty-seventh.

HERBERT HOOVER

By the President:

HENRY J. STIMSON

*Secretary of State.*

Effective date.

Duration.

Separability clause.

Ratification.

Certain treaty provisions abrogated.  
Vol. 8, p. 576; Vol. 26, p. 1505; Vol. 32, p. 1864; Vol. 31, p. 2203.

Ratifications exchanged.

Proclamation.

## ADDENDUM B.

## 2128 EXTRADITION TREATY—GREAT BRITAIN. DECEMBER 22, 1931.

Exchange of notes  
extending treaty pro-  
visions to Palestine,  
etc.

NOTES EXCHANGED CONCERNING THE EXTENSION TO PALESTINE AND  
TRANS-JORDAN OF THE EXTRADITION TREATY BETWEEN THE UNITED  
STATES OF AMERICA AND GREAT BRITAIN.

*The British Secretary of State for Foreign Affairs (Simon) to the  
American Ambassador (Dawes)*

No. T 15523/46/374.

FOREIGN OFFICE, S.W. 1.

22nd December, 1931.

YOUR EXCELLENCY,

*Ante, p. 2126.*

With reference to Article 17 of the Extradition Treaty between His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas and the President of the United States of America, signed this day at London, I have the honour to inform Your Excellency that His Majesty's Government in the United Kingdom desire that the provisions of the above mentioned Treaty shall, as from the date of its entry into force, be applicable to Palestine (excluding Transjordan).

2. I have accordingly the honour to enquire whether the United States Government agree with this proposal. In this event the present note and Your Excellency's reply to that effect will be regarded as placing on record the agreement arrived at in the matter.

I have the honour to be, with the highest consideration,

Your Excellency's obedient Servant,

JOHN SIMON

HIS EXCELLENCY

GENERAL CHARLES G. DAWES, C.B.,  
etc., etc., etc.

*The American Ambassador (Dawes) to the British Secretary of  
State for Foreign Affairs (Simon)*

No. 1582.

EMBASSY OF THE UNITED STATES OF AMERICA

LONDON, December 22, 1931.

SIR:

With reference to Article 17 of the Extradition Treaty between the President of the United States of America and His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas, signed this day at London, I have the honor to inform you that the Government of the United States of America is agreeable to the proposal of His Majesty's Government in the United Kingdom that the provisions of the above mentioned Treaty shall, as from the date of its entry into force, be applicable to Palestine (excluding Transjordan).

I have the honor to be, with the highest consideration, Sir,

Your most obedient, humble Servant,

CHARLES G. DAWES.

THE RIGHT HON<sup>BLE</sup>

SIR JOHN SIMON, G.C.S.I., etc., etc., etc.,  
Foreign Office, S.W. 1.



## ADDENDUM B.

## EXTRADITION TREATY—GREAT BRITAIN. DECEMBER 22, 1931. 2129

*The British Secretary of State for Foreign Affairs (Simon) to the American Ambassador (Dawes)* Page of Notes,  
etc.—Continued

No. T 15523/46/374.

FOREIGN OFFICE, S.W. 1.

22nd December, 1931.

YOUR EXCELLENCY,

With reference to Article 17 of the Extradition Treaty between His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas and the President of the United States of America, signed this day at London, I have the honour to inform Your Excellency that His Majesty's Government in the United Kingdom desire that the provisions of the above mentioned Treaty shall, as from the date of its entry into force, be applicable to Transjordan.

*Idem, p. 2126.*

2. I have accordingly the honour to enquire whether the United States Government agree with this proposal. In this event the present note and Your Excellency's reply to that effect will be regarded as placing on record the agreement arrived at in the matter.

I have the honour to be, with the highest consideration,

Your Excellency's obedient Servant,

JOHN SIMON

HIS EXCELLENCY

GENERAL CHARLES G. DAWES, C.B.,  
etc., etc., etc.

*The American Ambassador (Dawes) to the British Secretary of State for Foreign Affairs (Simon)*

No. 1583.

EMBASSY OF THE UNITED STATES OF AMERICA

LONDON, December 22, 1931.

SIR:

With reference to Article 17 of the Extradition Treaty between the President of the United States of America and His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas, signed this day at London, I have the honor to inform you that the Government of the United States of America is agreeable to the proposal of His Majesty's Government in the United Kingdom that the provisions of the above mentioned Treaty shall, as from the date of its entry into force, be applicable to Transjordan.

I have the honor to be, with the highest consideration, Sir,

Your most obedient, humble Servant,

CHARLES G. DAWES.

THE RIGHT HON<sup>BLE</sup>

SIR JOHN SIMON, G.C.S.I., etc., etc., etc.,  
Foreign Office, S.W. 1.

# ADDENDUM C - THE (BRITISH) FOREIGN TRIBUNALS EVIDENCE ACT 1856 WITH REVISIONS.

FOREIGN TRIBUNALS EVIDENCE ACT 1856

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issue a commission for the examination of witnesses out of their jurisdiction in any case in which, notwithstanding this Act, they shall think fit to issue such commission.

## NOTE

**Commission.** The power to issue commissions arose under the Evidence on Commission Act 1831 (repealed); but see the Evidence by Commission Act 1859, p. 829, *post*; and see also the Evidence by Commission Act 1885, p. 854, *post*.

## 6. Act not to affect law of evidence

Nothing herein contained shall alter or affect the admissibility of any evidence at any trial, where such evidence is now by law receivable on the ground of any witness being beyond the jurisdiction of the court; but the admissibility of all such evidence shall be determined as if this Act had not passed.

# THE FOREIGN TRIBUNALS EVIDENCE ACT 1856

(19 &amp; 20 Vict. c. 113)

## ARRANGEMENT OF SECTIONS

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*An Act to provide for taking Evidence in Her Majesty's Dominions in relation to Civil and Commercial Matters pending before Foreign Tribunals*  
[29th July 1856]

The short title was given to this Act by the Short Titles Act 1896.

**Extension to criminal cases.** The Act was extended by the Extradition Act 1870, s. 24, Vol. 13, title Extradition, so as to apply to criminal matters other than those of a political nature.

**Other extensions.** This Act may be applied by Order in Council to any foreign country in which Her Majesty has jurisdiction as if that country were a British possession; see the Foreign Jurisdiction Act 1890, s. 5 and Sch. 1, Vol. 4, pp. 508, 513. In addition, the Lord Chancellor may by order direct that any of the provisions of the Act is to apply to specified proceedings pursuant to the Convention on the settlement of investment disputes between states and nationals of other states, with or without modifications or exceptions; see the Arbitration (International Investment Disputes) Act 1966, s. 3 (1), Vol. 2, p. 471.

**Evidence Acts 1806 to 1895.** For the Acts including this Act which may be cited together by this collective title, see the Introductory Note to the Witnesses Act 1806, p. 802, *ante*.

**Oaths and Evidence (Overseas Authorities and Countries) Act 1963.** Under the Oaths and Evidence (Overseas Authorities and Countries) Act 1963, s. 1, in conjunction with s. 6 (2), pp. 902, 905, *post*, any person appointed by a court or other judicial authority of a foreign country has now power in the United Kingdom to administer oaths or take affidavits for the purpose of taking evidence for use in proceedings, other than criminal proceedings, carried on under the law of that country.

**Northern Ireland.** This Act applies; see *Re Louis Bockstael*, [1933] L.J. 1r. 46.



## ADDENDUM C.

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VOL. 12—EVIDENCE

**1. Order for the examination of witnesses in relation to matters pending before a foreign tribunal**

Where, upon an application for this purpose, it is made to appear to any court or judge having authority under this Act that any court or tribunal of competent jurisdiction in a foreign country, before which any civil or commercial matter is pending, is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction of such first-mentioned court, or of the court to which such judge belongs, or of such judge, it shall be lawful for such court or judge to order the examination upon oath, upon interrogatories or otherwise, before any person or persons named in such order, of such witness or witnesses accordingly; and it shall be lawful for the said court or judge, by the same order, or for such court or judge, or any other judge having authority under this Act, by any subsequent order to command the attendance of any person to be named in such order, for the purpose of being examined, or the production of any writings or other documents to be mentioned in such order, and to give all such directions as to the time, place, and manner of such examination, and all other matters connected therewith, as may appear reasonable and just; and any such order may be enforced in like manner as an order made by such court or judge in a cause depending in such court or before such judge.

**NOTES**

**Court or judge having authority under this Act.** See s. 6, *post*.

**Court or tribunal.** The Arbitral Commission on Property Rights and Interests in Germany, wherever sitting, is, for the purposes of this Act, to be treated as a tribunal in and of the Federal Republic of Germany; see the German Conventions Act 1955, s. 1 (3), Vol. 6, p. 897, in conjunction with the preamble to that Act, Vol. 6, p. 896.

This section may by Order in Council be applied to specified international courts, tribunals, commissions of enquiry or arbitrators; see the Oaths and Evidence (Overseas Authorities and Countries) Act 1963, s. 4 (1), p. 903, *post*. See also as to perjury in the case of such an extension, s. 4 (2) of the same Act.

**Foreign country.** The Republic of Ireland is not a foreign country; see the Ireland Act 1949, s. 2 (1), Vol. 4, p. 670. Nor is any country specified in the British Nationality Act 1948, s. 1 (3), Vol. 1, p. 863, even though it is not part of Her Majesty's dominions. On the other hand, a country in which Her Majesty exercises jurisdiction under the Foreign Jurisdiction Act 1890, Vol. 4, p. 504, is a foreign country; cf. s. 1 of that Act.

International courts, etc., are clearly not judicial authorities of a foreign country; but note the note "Court or tribunal" above.

**Testimony in relation to this matter.** This means testimony relevant to the issues to be tried in the foreign action; see *Radio Corporation of America v. Rauland Corporation*, [1956] 1 Q.B. 618; [1956] 1 All E.R. 549.

There is authority for saying that a body corporate cannot be ordered to give evidence; see *Penn-Texas Corporation v. Murat Anstalt*, [1964] 1 Q.B. 40; [1963] 1 All E.R. 258, C.A.

**Production of any writings, etc.** A person having possession, custody or control of documents only as a servant cannot be ordered to produce them unless the court is satisfied that he can do so without violating his duty to his master; see *Eccles & Co. v. Louisville and Nashville Railroad Co.*, [1912] 1 K.B. 135.

Production may be ordered against a body corporate; see *Penn-Texas Corporation v. Murat Anstalt*, [1964] 1 Q.B. 40; [1963] 1 All E.R. 258, C.A., and *Penn-Texas Corporation v. Murat Anstalt* (No. 2), [1964] 2 Q.B. 647; [1964] 2 All E.R. 594, C.A.

The documents to be produced must have been ascertained to exist and be capable of being specifically identified; see *Penn-Texas Corporation v. Murat Anstalt*, *supra*.

The order must also name the examiner and unless there is some special reason to the contrary, one of the examiners of the court should be named.

For procedure, see R.S.C. Ord. 70, and for a form of order, see R.S.C., Appendix A No. 93. See also as to appeals against an order, *Simpson v. Hazard*, [1887] W.N. 115.

The evidence on the examination can only be taken in the English way, but the English rules as to admissibility need not be strictly followed where the answers to the questions may reasonably be supposed to throw light on the questions at issue (*Desilla v. Fells & Co.* (1879), 40 L.T. 423, *per* Cockburn, C.J.). Effect should also be given to the rules of evidence of the foreign court if known (*Desilla v. Fells & Co.*, *supra*, *per* Cockburn, C.J., cited with approval in *Eccles & Co. v. Louisville and Nashville Railroad Co.*, [1912] 1 K.B. 135, C.A., at p. 144, *per* Vaughan Williams, L.J.).

## ADDENDUM C.

FOREIGN TRIBUNALS EVIDENCE ACT 1856, S. 5

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Unless the order for examination directs that the examination be taken in a particular manner, the examination is to be taken in the manner prescribed by R.S.C. Ord. 39, rr. 5-10 and 11 (1)-(3) (see R.S.C. Ord. 70, r. 4 (2)). See also R.S.C. Ord. 70, r. 4 (1), (3).

## 2. Certificate of ambassador, etc., sufficient evidence in support of application

A certificate under the hand of the ambassador, minister, or other diplomatic agent of any foreign power, received as such by Her Majesty, or in case there be no such diplomatic agent, then of the consul general or consul of any such foreign power at London, received and admitted as such by Her Majesty, that any matter in relation to which an application is made under this Act is a civil or commercial matter pending before a court or tribunal in the country of which he is the diplomatic agent or consul having jurisdiction in the matter so pending, and that such court or tribunal is desirous of obtaining the testimony of the witness or witnesses to whom the application relates, shall be evidence of the matters so certified; but where no such certificate is produced, other evidence to that effect shall be admissible.

### NOTE

*Court or tribunal.* See the first paragraph of the note to s. 1, *ante*.

This section may be applied with specified modifications by an Order in Council under the Oaths and Evidence (Overseas Authorities and Countries) Act 1963, s. 4, p. 903, *post*.

## 3. Examination of witnesses to be taken upon oath

It shall be lawful for every person authorized to take the examination of witnesses by any order made in pursuance of this Act to take all such examinations upon the oath of the witnesses, or affirmation in cases where affirmation is allowed by law instead of oath, to be administered by the person so authorized . . .

### NOTES

The words omitted were repealed by the Perjury Act 1911, s. 17 and Schedule (see now s. 1 of that Act, Vol. 8, p. 241), and the Perjury Act (Northern Ireland) 1946, s. 16 (3) and Schedule.

*Affirmation.* As to when a witness may affirm instead of taking the oath, or may even be required to do so, see the Quakers and Moravians Act 1833, p. 803, *ante*; the Quakers and Moravians Act 1838, p. 811, *ante*; the Oaths Act 1888, s. 1, p. 850, *post*; and the Oaths Act 1961, s. 1, p. 901, *post*.

## 4. Expenses of witnesses

Provided always, that every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial.

### NOTE

*Conduct money.* For provisions as to conduct money, see the Writ of Subpoena Act 1805, s. 4, p. 801, *ante*, and the Attendance of Witnesses Act 1854, s. 4, p. 824, *ante*; see also the Costs in Criminal Cases Act 1952, s. 1 (2), Vol. 8, p. 395; and see, generally, as to expenses of witnesses, the cases cited in 22 Digest (Repl.) 427 *et seq*.

## 5. Extent of right of refusal to answer questions and to produce documents

Provided also, that every person examined under any order made under this Act shall have the like right to refuse to answer questions tending to criminate



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himself, and other questions, which a witness in any cause pending in the court by which or by a judge whereof or before the judge by whom the order for examination was made would be entitled to; and that no person shall be compelled to produce under any such order as aforesaid any writing or other document that he would not be compellable to produce at a trial of such a cause.

## NOTES

**General Note.** This section must in England and Wales now be read in conjunction with the Civil Evidence Act 1968, s. 17 (2), p. 930, *post*.

**Attachment for contempt.** A person named in an order for examination, should he refuse to obey the order, may be punished by attachment for contempt, but the court will not order the attachment of a witness examined under this Act for refusing to produce documents specified in the order if the documents are in his possession, custody or control as servant only of a master who is neither a party to the proceedings with reference to which the order was made nor before the court, unless the court be satisfied that the production of the documents would not be in violation of the servant's duty to his master (*Eccles & Co. v. Louisville and Nashville Railroad Co.*, [1912] 1 K.B. 135, C.A.). See, generally, as to penalties for non-attendance, the cases cited in 22 Digest (Repl.) 439 *et seq.*

**Incriminating questions.** As to a witness's right in certain circumstances to refuse to answer questions, see 15 Halsbury's Laws (3rd Edn.) 422 *et seq.*; the note to the Evidence Act 1851, s. 3, p. 817, *ante*; and the Civil Evidence Act 1968, s. 14, p. 926, *post*.

**Production of documents.** See *Eccles & Co. v. Louisville and Nashville Railroad Co.*, [1912] 1 K.B. 135, C.A.; and see also the note to the Evidence by Commission Act 1859, s. 1, p. 830, *post*.

#### 6. Certain courts and judges to have authority under this Act

Her Majesty's Superior Courts of Common Law at Westminster and in Dublin respectively, the Court of Session in Scotland, and any Supreme Court in any of Her Majesty's colonies or possessions abroad, and any judge of any such court, and every judge in any such colony or possession who by any Order of Her Majesty in Council may be appointed for this purpose, shall respectively be courts and judges having authority under this Act . . .

## NOTES

The words omitted were repealed by the Statute Law Revision and Civil Procedure Act 1881, s. 3 and Schedule.

**Superior Courts at Westminster.** See the note to the Evidence Act 1845, s. 2, p. 814, *ante*.

**Superior Courts at Dublin.** See the note to the Attendance of Witnesses Act 1854, s. 1, p. 824, *ante*.

**Order in Council.** There is no exercise of the power now in operation.

## ADDENDUM C.

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## EVIDENCE

Quakers and Moravians Act 1838 (c. 77)

No change

Evidence Act 1843 (c. 85)

No change

Evidence Act 1845 (c. 113)

No change

Evidence Act 1851 (c. 99)

No change

Evidence Amendment Act 1853 (c. 83)

Section 3

*Northern Ireland.* Restricted to criminal proceedings by the Civil Evidence Act (Northern Ireland) 1971, s. 12 (3).

Attendance of Witnesses Act 1854 (c. 34)

Extended by the Misuse of Drugs Act 1971, s. 16 (1), Sch. 3, para. 5 (2), Vol. 41, pp. 896, 916.

Foreign Tribunals Evidence Act 1856 (c. 113)

This Act is excluded by the Maintenance Orders (Reciprocal Enforcement) Act 1972, s. 44 (2), Vol. 42, p. 756.

Section 1

As to the principle on which the court's discretion is to be exercised under this section, see *Seyfang v. G. D. Searle & Co.*, [1973] Q.B. 148; [1973] 1 All E.R. 290.

*Any witness.* This includes an expert witness; see *Seyfang v. G. D. Searle & Co.*, noted above.

Section 2

*Court or tribunal.* This section is applied to the Court of Justice of the European Communities with the modification that the person by whom a certificate may be given under this section is the Registrar of the said Court; see the Evidence (European Court) Order 1972, S.I. 1972 No. 1722, art. 2.

Section 5

*Northern Ireland.* This section must now be read in conjunction with the Civil Evidence Act (Northern Ireland) 1971, s. 13 (2).

Evidence by Commission Act 1859 (c. 20)

This Act is excluded by the Maintenance Orders (Reciprocal Enforcement) Act 1972, s. 44 (2), Vol. 42, p. 756, as from a day to be appointed.

Section 1

*Her Majesty's Dominions.* Another Commonwealth country still covered by this expression which has become a republic. The Gambia; see the Republic of The Gambia Act 1970, s. 1, Vol. 40, p. 293. (The Gambia having become part of Her Majesty's dominions under the Gambia Independence Act 1964, s. 1 (1), Vol. 4, p. 292.)

Section 4

*Northern Ireland.* This section must now be read in conjunction with the Civil Evidence Act (Northern Ireland) 1971, s. 13 (2).

British Law Ascertainment Act 1859 (c. 63)

No change

Foreign Law Ascertainment Act 1861 (c. 11)

Repealed by the Statute Law (Repeals) Act 1973, ss. 1 (1), 2, Sch. 1, Part VII, Vol. 43, pp. 1381, 1382.

Criminal Procedure Act 1865 (c. 18)

Section 4

*General Note.* See *R. v. Bashir*, *R. v. Manzur* (1970), 54 Cr. App. Rep. 1 (if statements put to accused in cross-examination are denied, the denial may be contradicted by a defence witness).

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# ADDENDUM D - THE (BRITISH) EXTRADITION ACT 1870 WITH REVISIONS.

## EXTRADITION ACT 1870

### THE EXTRADITION ACT 1870

(33 & 34 Vict. c. 52)

#### ARRANGEMENT OF SECTIONS

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#### *An Act for amending the Law relating to the Extradition of Criminals*

[9th August 1870]

A chief officer of police must report to the Director of Public Prosecutions cases within his district under the Extradition Acts 1870 to 1935; see the Prosecution of Offences Regulations 1946, S.R. & O. 1946 No. 1467.

**Extradition Acts 1870 to 1935.** By the Counterfeit Currency (Convention) Act 1935, s. 6 (4), Vol. 8, p. 317, the following Acts or parts of Acts may be cited by this collective title:—the Extradition Act 1870 (this Act); the Extradition Act 1873, p. 270, *post*; the Extradition Act 1895, p. 273, *post*; the Extradition Act 1906, p. 274, *post*; the Extradition Act 1932, p. 275, *post*; the Counterfeit Currency (Convention) Act 1935, s. 4, Vol. 8, p. 316.

Law justices in the inner London area may not exercise the jurisdiction conferred on

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metropolitan stipendiary magistrates by these Acts; see the Administration of Justice Act 1964, s. 9 (3), Vol. 20, title London Government.

**Parliamentary Commissioner.** No action taken under this Act or the Fugitive Offenders Act 1967, p. 286, *post*, is subject to investigation by the Commissioner; see the Parliamentary Commissioner Act 1967, s. 5 (3) and Sch. 3, para. 4, Vol. 6, pp. 825, 834.

**Constructor.** This Act, the Extradition Act 1873, p. 270, *post*, and the Extradition Act 1895, p. 273, *post*, are to be construed as one; see s. 2 of the last-mentioned Act, p. 274, *post*. See also the Extradition Act 1906, s. 1, p. 274, *post*, the Extradition Act 1932, s. 1, p. 275, *post*, and the Counterfeit Currency (Convention) Act 1935, s. 4, Vol. 8, p. 316.

**Northern Ireland.** This Act applies.

*Preliminary***1. Short title**

This Act may be cited as "The Extradition Act, 1870."

**2. Where arrangement for surrender of criminals made, Order in Council to apply Act**

Where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals, Her Majesty may, by Order in Council, direct that this Act shall apply in the case of such foreign state.

Her Majesty may, by the same or any subsequent order, limit the operation of the order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

Every such order shall be laid before both Houses of Parliament within six weeks after it is made, or, if Parliament be not then sitting, within six weeks after the then next meeting of Parliament, and shall also be published in the London Gazette.

**NOTES**

**Fugitive criminals in British possessions.** See ss. 17 and 18, *post*.

**Arrangement with foreign state.** The arrangement must be terminable at not less than one year's notice and must otherwise comply with the provisions of this Act. The publication of an order is conclusive evidence that the arrangement therein referred to complies with the provisions of this Act, and the validity of such order is not to be questioned; see ss. 4 and 5, *post*.

**Laid before Parliament.** Orders under this section are subject to the Statutory Instruments Act 1946, Vol. 32, title Statutes, and where made after 31st December 1947, are, by virtue of s. 1 (2) of that Act, statutory instruments. S. 4 (3) of that Act makes provision for copies of such instruments to be laid before Parliament normally before they come into operation. By s. 12 (2) of that Act, publication in the London Gazette of a notice stating that a statutory instrument has been made, and specifying the places where copies thereof may be purchased is sufficient compliance with the provisions of any enactment requiring the instrument to be published in the Gazette.

For provisions governing the laying of instruments before Parliament, see the Laying of Documents before Parliament (Interpretation) Act 1948, s. 1, Vol. 32, title Statutes.

**Definitions.** For "foreign state", see s. 25, *post*; for "fugitive criminals", and other definitions, see s. 26, *post*.

**Orders under this section.** The following Orders in Council have been made providing that the Extradition Acts 1870 to 1935, shall apply as between certain foreign powers and states and the United Kingdom and other parts of the Commonwealth:

Albania. S.R. & O. 1927 No. 605.

Argentine Republic. S.R. & O. 1894 No. 76.

Austria. The treaty with Austria was suspended on the outbreak of war in 1939, and up to 23rd June 1969 had not been revived.



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## EXTRADITION ACT 1870, S. 2

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- Belgium. S.R. & O. 1902 No. 208; S.R. & O. 1907 No. 544; S.R. & O. 1911 No. 793; S.R. & O. 1924 No. 81; S.R. & O. 1928 No. 574 (Ruanda-Urundi).
- Bolivia. S.R. & O. 1898 No. 1065.
- Chile. S.R. & O. 1898 No. 597.
- Colombia. 28th November 1889, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 71.
- Cuba. S.R. & O. 1905 No. 558.
- Czechoslovakia. S.R. & O. 1926 No. 1466.
- Denmark. 26th June 1873, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 93; S.R. & O. 1936 No. 405; S.R. & O. 1936 No. 1133 (Australia); S.R. & O. 1938 No. 780 (New Zealand).
- Ecuador. 26th June 1886, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 110.
- Estonia. S.R. & O. 1926 No. 840. See the remark against Russia.
- Finland. S.R. & O. 1925 No. 448.
- France. 16th May 1878, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 132; S.R. & O. 1896 No. 54; S.R. & O. 1909 No. 1458; S.R. & O. 1928 No. 575 (Cameroons and Togoland).
- Germany (Federal Republic of Germany and West Berlin). S.I. 1960 No. 1375.
- Greece. S.R. & O. 1912 No. 193.
- Guatemala. 20th November 1886, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 161; S.R. & O. 1914 No. 1323.
- Hayti. 5th February 1876, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 169.
- Hungary. 17th March 1874, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 18; 15th September 1902, S.R. & O. 1902 No. 737; S.R. & O. 1937 No. 719 (Great Britain and Northern Ireland, Channel Islands, Isle of Man and Colonies); S.R. & O. 1938 No. 138 (Australia); S.R. & O. 1938 No. 139 (New Zealand). As to the post-war revival of extradition treaties, etc., see *London Gazette* dated 6th April 1948.
- Iceland. S.R. & O. 1939 No. 825; S.R. & O. 1939 No. 1530 (Australia); S.R. & O. 1940 No. 86 (New Zealand).
- Iraq. S.R. & O. 1933 No. 357 (Great Britain and Northern Ireland, Channel Islands, Isle of Man, and Colonies); S.R. & O. 1934 No. 925 (Australia and New Zealand); S.R. & O. 1937 No. 247 (India and Pakistan).
- Israel. S.I. 1960 No. 1060.
- Italy. 24th March 1873, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 216.
- Latvia. S.R. & O. 1925 No. 1029. See the remark against Russia.
- Liberia. S.R. & O. 1894 No. 114.
- Lithuania. S.R. & O. 1927 No. 504. See the remark against Russia.
- Luxemburg. 2nd March 1881, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 242; S.I. 1951 No. 1170, and S.I. 1951 No. 1171 (Australia).
- Mexico. 6th April 1889, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 249.
- Monaco. 9th May 1892, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 256.
- Netherlands. S.R. & O. 1899 No. 83.
- Nicaragua. S.R. & O. 1906 No. 382.
- Norway. 30th September 1873, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 387; S.R. & O. 1907 No. 545.
- Panama. S.R. & O. 1907 No. 648.
- Paraguay. S.R. & O. 1911 No. 662.
- Peru. S.R. & O. 1907 No. 383.
- Poland. S.R. & O. 1934 No. 209 (Great Britain and Northern Ireland, Channel Islands, Isle of Man, and Colonies); S.R. & O. 1934 No. 1131 (India and Pakistan).
- Portugal. S.R. & O. 1894 No. 102; S.R. & O. 1933 No. 678.
- Roumania. S.R. & O. 1894 No. 119. As to the post-war revival of extradition treaties, etc., see *London Gazette*, dated 6th April 1948.
- Russia. 7th March 1887, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 349. The treaty concluded with Imperial Russia has for many years been tacitly regarded as inoperative (see 478 H. of C. Official Report 464), and it is thought that this would apply also to the treaties with Estonia, Latvia and Lithuania.
- Salvador. 16th December 1882, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 356.
- San Marino. S.R. & O. 1900 No. 168.
- Siam (now Thailand). S.R. & O. 1911 No. 1151.
- Spain. 27th November 1878, 28th May 1889, S.R. & O. Rev. 1948, IX, Fugitive Criminal, pp. 376, 385.
- Sweden. S.I. 1966 Nos. 226 and 211.
- Switzerland. 18th May 1881, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 393; S.R. & O. 1905 No. 616; S.R. & O. 1935 No. 676 (Great Britain and Northern Ireland, Channel Islands, Isle of Man, and Colonies); S.R. & O. 1935 No. 1249 (Australia and New Zealand).
- Thailand. See Siam.
- United States. 21st March 1890, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 413; S.R. & O. 1901 No. 544; S.R. & O. 1907 No. 110; S.R. & O. 1935 No. 574 (Great

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Britain and Northern Ireland, Channel Islands, Isle of Man, and Colonies); S.R. & O. 1935 No. 848 (Australia); S.R. & O. 1942 No. 374 (India and Pakistan).  
 Uruguay. 5th March 1885, 24th November 1891, S.R. & O. Rev. 1948, IX, Fugitive Criminal, pp. 447, 455.  
 Yugoslavia. S.R. & O. 1901 No. 586.

In addition the following Orders have been made applying the Extradition Acts 1870 to 1935, for the suppression of the white slave traffic:—S.R. & O. 1923 Nos. 971 (as amended by S.I. 1951 No. 1384) and 1593 (Austria, Belgium, France, Hungary, Monaco, Netherlands, Norway, Portugal, Siam (Thailand), Spain, Tunis, Uruguay); S.R. & O. 1931 No. 718 and S.R. & O. 1934 No. 310 (Cuba, Italy, Luxemburg, Switzerland, Yugoslavia); S.R. & O. 1934 No. 500 (Denmark).

## 3. Restrictions on surrender of criminals

The following restriction shall be observed with respect to the surrender of fugitive criminals:

- (1) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character:
- (2) A fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state, or by arrangement that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded:\*
- (3) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise:
- (4) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

## NOTES

**Offence of political character.** See as to what constitutes an "offence of a political character", *Re Castioni*, [1891] 1 Q.B. 149; [1886-90] All E.R. Rep. 640; *Re Meunier*, [1894] 2 Q.B. 415; *R. v. Governor of Brixton Prison, Ex parte Kolczynski*, [1955] 1 Q.B. 540; [1955] 1 All E.R. 31; *Schtraks v. Government of Israel*, [1964] A.C. 556; [1962] 3 All E.R. 529, and *Re Gross, Ex parte Treasury Solicitor*, [1968] 3 All E.R. 804.

For the purposes of this Act, the Fugitive Offenders Act 1967, p. 286, *post*, the Extradition Act 1873, p. 270, *post*, and the Backing of Warrants (Republic of Ireland) Act 1965, p. 275, *post*, an offence of genocide, or an attempt, conspiracy or incitement to commit such an offence is not to be regarded as an offence of a political character, and no proceedings in respect of such an offence are to be regarded as criminal matters of a political character; see the Genocide Act 1969, s. 2 (2), (3), Vol. 45, title Criminal Law.

For further reference in this Act to offences of a political character and their effect, see s. 7, *post* (refusal of Secretary of State to make order for apprehension); s. 9, *post* (evidence of political character); s. 24 (proviso), *post* (foreign state obtaining evidence in United Kingdom); see also the Extradition Act 1873, s. 5 (proviso), *post* (taking evidence in United Kingdom for foreign criminal matters).

As to the second restriction on surrender in para. (1), the court has no jurisdiction to inquire whether the demand for surrender is made in good faith and in the interests of justice, the restriction applying only to an offence of a political character which has already been committed (*Re Arton (No. 1)*, [1896] 1 Q.B. 108). Where a prisoner has been committed for extradition in respect of crimes *prima facie* divested of any political character and there is no evidence that they are of a political character, but only a suggestion to that effect,



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the court will grant no *habeas corpus* (*Re Arden* (No. 1), [1890] 1 Q.B. 108). A bare statement, unsupported by any evidence, in an affidavit in support of an application for a writ of *habeas corpus*, that the applicant is a political refugee is not sufficient to entitle the court to order the writ to issue (*R. v. Governor of Brixton Prison, Ex parte Sarno*, [1910] 2 K.B. 742). But the magistrate must receive any evidence tendered of the political character of the crime (see s. 9, *post*).

It is the duty of the magistrate to determine on the whole of the evidence whether the offence is of a political character and whether it is an extraditable crime; he cannot determine this finally against the prisoner because the prisoner can question his decision by applying for *habeas corpus* (*R. v. Governor of Brixton Prison, Ex parte Kolczynski*, [1955] 1 Q.B. 540; [1955] 1 All E.R. 31). The proceedings for *habeas corpus*, subsequent to the magistrates' committal order, are not an appeal or a re-hearing, but the court's functions in them is to see whether the prisoner is lawfully detained; thus the court cannot receive further evidence tendered for the purpose of contradicting testimony on which the chief magistrate had made the committal order (*Schtraks v. Government of Israel*, [1964] A.C. 556; [1962] 3 All E.R. 529).

**Secretary of State.** In practice the powers and duties conferred by this Act are exercised by the Home Secretary; see 7 Halsbury's Laws (3rd Edn.) 412.

**Provision made by law.** A circular, issued by the Minister of Justice to the law officers of the French Government, and including this restriction, is a "provision made by law" (*Re Bouvier* (1872), 42 L.J.Q.B. 17). See also *Re Woodhall* (1888), 57 L.J.M.C. 72 (no express provision in United States law, but provision held to exist in consequence of decision of Supreme Court in *United States v. Rauscher* (1886), 12 Davis Sup. Ct. 407, that the provision was of necessity to be implied in the principles of extradition). These two cases arose under the old treaties with France and the United States respectively, made before the passing of this Act, which introduced the new requirement, while the treaties had not been replaced by new ones. By s. 27, *post*, this Act applied to the old treaties in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act.

**By arrangement.** The requirement in para. (2) is complied with as long as there is a provision to the effect required in the treaty with the foreign state in question; and an undertaking is not required to be given in each case.

**Institution of proceedings.** Proceedings upon a claim for extradition by a foreign state may be instituted before the sentence has expired and an order of committal for extradition made to take effect upon such expiry, and the prisoner may be surrendered under such order although at the date of the surrender, but not at the date of the extradition proceedings, the fugitive had become by the law of the foreign State exempted from prosecution by reason of lapse of time (*R. v. Governor of Brixton Prison, Ex parte Van der Auwera*, [1907] 2 K.B. 157). In this case Lord Alverstone, C.J., declined to express an opinion as to the validity of proceedings for committal taken after such a period had elapsed as would prevent the offence being subject to punishment in the foreign country.

**United Kingdom.** *I.e.*, Great Britain and Northern Ireland; see the Royal and Parliamentary Titles Act 1927, s. 2 (2), Vol. 6, p. 520.

**Expiration of fifteen days.** The magistrate must inform the prisoner that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus* (see s. 11, *post*). The Secretary of State may extend this period; see s. 11, *post*.

**Definitions.** For "foreign state", see s. 25, *post*; for "fugitive criminal", "police magistrate" and "extradition crime", see s. 26, *post*.

#### 4. Provisions of arrangement for surrender

An Order in Council for applying this Act in the case of any foreign state shall not be made unless the arrangement—

- (1) provides for the determination of it by either party to it after the expiration of a notice not exceeding one year; and,
- (2) is in conformity with the provisions of this Act, and in particular with the restrictions on the surrender of fugitive criminals contained in this Act.

#### NOTES

**Notice not exceeding one year.** The notice usually agreed upon is one of six months.

**Restrictions on the surrender of fugitive criminals.** The restrictions referred to are those contained in s. 3, *ante*.

**Definitions.** For "foreign state", see s. 25, *post*; for "fugitive criminal", see s. 26, *post*.

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**5. Publication and effect of Order**

When an Order applying this Act in the case of any foreign state has been published in the London Gazette, this Act (after the date specified in the Order, or if no date is specified, after the date of the publication), shall, so long as the Order remains in force, but subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the Order apply in the case of such foreign state. An Order in Council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this Act, and that this Act applies in the case of the foreign state mentioned in the Order, and the validity of such order shall not be questioned in any legal proceedings whatever.

**NOTES**

**General Note.** The application of the Act is limited to the terms of the treaty with the foreign state; see *R. v. Wilson* (1877), 3 Q.B.D. 42 (arrangement that neither state was to surrender its own subjects).

**Foreign state.** For meaning, see s. 25, *post*.

**Published in London Gazette.** By the Statutory Instruments Act 1946, s. 12 (2), Vol. 32, title Statutes, the requirement as to publication is satisfied by publication of notice of the making of an order and of the place where copies may be purchased.

**Conclusive evidence.** This means that no evidence to the contrary is admissible; see, in particular, *Kerr v. John Mottram, Ltd.*, [1940] Ch. 657; [1940] 2 All E.R. 629. It does not mean that no other evidence is admissible; see *A.-G. v. Bournemouth Corporation*, [1902] 2 Ch. 714, C.A.

**6. Liability of criminal to surrender**

Where this Act applies in the case of any foreign state, every fugitive criminal of that state who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the Order applying this Act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the Order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime.

**NOTES**

**Date of offence.** As to the materiality of the date of the offence, see *R. v. Ashforth* (1892), 8 T.L.R. 283. In certain cases conventions have been made between this country and foreign States, which are expressed not to apply to offences committed before the date of the coming into operation of the conventions.

**Definitions.** For "foreign state", see s. 25, *post*, and for "fugitive criminal", see s. 26, *post*.

**7. Order of Secretary of State for issue of warrant in United Kingdom if crime is not of a political character**

A requisition for the surrender of a fugitive criminal of any foreign state, who is in or suspected of being in the United Kingdom, shall be made to a Secretary of State by some person recognised by the Secretary of State as a diplomatic representative of that foreign state. A Secretary of State may, by order under his hand and seal, signify to a police magistrate that such a requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

If the Secretary of State is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.



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## NOTES

**Form and effect of requisition.** As to the meaning of "diplomatic representative", see the Extradition Act 1873, s. 7, *post*; and *R. v. Governor of Brixton Prison*, [1912] 2 K.B. 578; and as to priority, where a requisition is made by more than one state, see *R. v. Kams* (1900), *Times*, 30th April. See also the Fugitive Offenders Act 1967, s. 9 (5), *post*, as to priority for a requisition under this section as against an order for return under s. 9 of the Act of 1967. *Scoble*, after a requisition in due form it is obligatory on the authorities to arrest the fugitive (*A.-G. for Canada v. Fedorenko*, [1911] A.C. 735). For cases, see further, 24 Digest (Repl.) 995, 996.

No form of requisition is used in the application for the surrender of the fugitive criminal, which is usually made by letter; see 16 Halsbury's Laws (3rd Edn.) 507.

**United Kingdom.** See the note to s. 3, *ante*.

**Secretary of State.** See the note to s. 3, *ante*.

**Offence of a political character.** See the note to s. 3, *ante*.

**Definitions.** For "foreign state", see s. 25, *post*; for "convicted", "fugitive criminal" and "police magistrate", see s. 26, *post*.

## 8. Issue of warrant by police magistrate, justice, etc.

A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in the United Kingdom, may be issued—

1. By a police magistrate on the receipt of the said order of the Secretary of State, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England; and
2. By a police magistrate or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.

Any person issuing a warrant under this section without an order from a Secretary of State shall forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to a Secretary of State, who may if he think fit order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged.

A fugitive criminal, when apprehended on a warrant issued without the order of a Secretary of State, shall be brought before some person having power to issue a warrant under this section, who shall by warrant order him to be brought and the prisoner shall accordingly be brought before a police magistrate.

A fugitive criminal apprehended on a warrant issued without the order of a Secretary of State shall be discharged by the police magistrate, unless the police magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from a Secretary of State an order signifying that a requisition has been made for the surrender of such criminal.

## NOTES

**Form and contents of warrant.** For form of warrant, see Sch. 2, *post*. The magistrate need not state in his warrant that the evidence on which it issued was given upon oath (see *Re Tivnan* (1864), 5 B. & S. 645). The warrant need not describe the offence in specific terms, so long as it describes an extradition offence (*Ex parte Terraz* (1878), 4 Ex.D. 63). The following have been held to be sufficient descriptions in the warrant of the offences charged: "Crimes against bankruptcy law" (*Ex parte Terraz* (1878), 4 Ex.D. 63); "suspected of fraud" (*R. v. Jacobi and Hiller* (1881), 46 L.T. 595, n., D.C.); "fraud by an agent" (*Ex parte Piot* (1883), 48 L.T. 120); "fraud by a bailor" (*Re Bellescontre*, [1891] 2 Q.B. 122). The date of the offence must be stated in the warrant (*R. v. Ashforth* (1892), 8 T.L.R. 283).

The forms of warrant may in certain cases be varied; see, *e.g.*, the Extradition Act 1895, s. 1 (3), *post*.

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**Apprehension.** This term includes the detention of a person already in custody, even though he was originally arrested without any warrant (*R. v. Weil* (1882), 9 Q.B.D. 701, C.A.).

**United Kingdom.** See the note to s. 3, *ante*.

**Sufficiency of evidence.** "All that the Act requires is that the evidence should be sufficient 'in the opinion of the person issuing the warrant'. That is a matter of judicial discretion. There must be some evidence, but very little will do". (*R. v. Weil* (1882), 9 Q.B.D. 701, C.A., at p. 706, *per* Jessel, M.R.). See also *R. v. Governor of Brixton Prison, Ex parte Mourat Mehmet*, [1962] 2 Q.B. 1; [1962] 1 All E.R. 463; approved in *Armah v. Government of Ghana*, [1966] 3 All E.R. 177, H.L.; *Re James*, cited in [1962] 1 All E.R. 467; *Ex parte Schtraks*, [1964] 1 Q.B. 191; [1962] 3 All E.R. 849.

**Ultior purpose.** If a warrant is obtained, not for the *bona fide* purpose of punishing a person for a crime, but with the indirect object of making him amenable to an attachment in a civil action, the court will relieve against such an abuse of process (*Pooley v. W'etham* (1880), 15 Ch.D. 435, C.A.).

**England.** This expression includes Wales; see the Wales and Berwick Act 1746, s. 3, Vol. 32, title Statutes.

**Execution of warrant.** See s. 15, *post*.

**Secretary of State.** See the note to s. 3, *ante*.

**Definitions.** For "convicted", "fugitive criminal", "police magistrate" and "justice of the peace", see s. 26, *post*.

## 9. Hearing of case and evidence of political character of crime

When a fugitive criminal is brought before the police magistrate, the police magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England.

The police magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

## NOTES

**As near as may be.** This limitation means as near as may be consistent with this Act as amended by the Extradition Act 1873, p. 270, *post*, and the Extradition Act 1895, p. 273, *post*.

**General powers of magistrate.** The duties and powers of the magistrate are regulated and defined by the Magistrates' Courts Acts 1952 and 1957, Vol. 21, title Magistrates.

**Conduct of proceedings; appeals.** The proceedings must be conducted throughout by the same magistrate (*Re Guerin* (1888), 58 L.J.M.C. 42). The Order in Council applying the Act should be given in evidence before the magistrate, but the mere omission to give formal proof of it does not entitle the prisoner to be released, where it contains nothing that can assist him (*R. v. Governor of Brixton Prison, Ex parte Scrvini*, [1914] 1 K.B. 77). An appeal lies to the Queen's Bench Division from the decision of a magistrate on a question of fact which is cardinal to the jurisdiction, but collateral to the subject of inquiry, as, for instance, from a decision that an accused person against whom an extradition order is sought is not a "native-born" British subject within the exemption contained in the Extradition Treaty between Great Britain and France (*Re Guerin* (1888), 58 L.J.M.C. 42). *Scoble*, a magistrate acting under this section has power to impound goods for the purpose of their being produced as evidence upon the trial abroad (*R. v. Lushington, Ex parte Otto*, [1894] 1 Q.B. 420). A writ of *habeas corpus* will not be granted to discharge a prisoner out of custody while investigation before a magistrate is pending (*United States of America v. Gaynor*, [1905] A.C. 128). Apart from an express provision to the contrary in an extradition treaty with a foreign state, there is no limitation to the magistrate's power to remand and adjourn, which is the same as that which he exercises under the Magistrates' Courts Act 1952, Vol. 21, title Magistrates.

**Offence of a political character.** See the note to s. 3, *ante*.

**Granting of bail.** The magistrate has power to admit the defendant to bail, his jurisdiction depending in each case upon the terms of the treaty with the foreign state (*R. v. Spilsbury*, [1898] 2 Q.B. 615).

A defendant, arrested in extradition proceedings for an offence committed abroad, and remanded pending the receipt of further information from the foreign country, is not entitled as of right to be granted bail either by the magistrate or by the Queen's Bench Division, but the matter is in the magistrate's discretion (*R. v. Phillips* (1922), 128 L.T. 113).

**Legal aid.** Legal aid may be given to a person brought before a metropolitan stipendiary



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magistrate to be dealt with under this section; see the Criminal Justice Act 1967, ss. 73 (2) and 74 (11). Vol. 8, pp. 617, 621.

**Venue.** As to circumstances affecting venue, see s. 16, *post*, and the Extradition Act 1895, s. 1, p. 273, *post*.

See, further, 24 Digest (Repl.) 998-1005.

**Definitions.** For "fugitive criminal", "police magistrate" and "extradition crime", see s. 26, *post*.

### 10. Committal or discharge of prisoner

In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

If he commits such criminal to prison, he shall commit him . . . , there to await the warrant of a Secretary of State for his surrender, and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit.

### NOTES

The words omitted, which provided for committal to the Middlesex House of Detention, or to some other prison in Middlesex, were repealed by the Administration of Justice Act 1961, ss. 39 (2), 41 (8), Sch. 3, para. 9 and Sch. 5.

**Foreign warrant.** It is not necessary for the foreign warrant to describe the offence in terms identical with those of English criminal law (*R. v. Jacobi and Hiller* (1881), 46 L.T. 595, n.; *Re Belenconre*, [1891] 2 Q.B. 122). As to the manner of authenticating the foreign warrant, see s. 15, *post*.

**Committal to prison.** This means committal of the accused person to prison by the magistrate, upon the conclusion of the proceedings before him, to await the warrant of the Secretary of State for his extradition, and does not mean the arrest of the accused under the warrant issued by the magistrate in the first instance (*R. v. Governor of Brixton Prison, Ex parte Mohamed Ben Ronnan*, [1912] 3 K.B. 190).

The magistrate's warrant of committal must set out in terms the offence which is proved by the evidence before him. If it sets out an offence not so proved, the court will, on application for a writ of *habeas corpus*, order the prisoner to be discharged (*R. v. Portugal* (1885), 16 Q.B.D. 487). The court will also discharge him if the warrant of arrest and warrant of committal wrongly describe him as "accused of the crime" whereas he is a convicted person; see *Re Caborn-Waterfield*, [1960] 2 All E.R. 178. To satisfy a magistrate in committing a prisoner there must be some evidence that he committed the extradition crime within the jurisdiction of the country seeking extradition (*R. v. Lavandier* (1881), 15 Cox C.C. 329, D.C.). Where the prisoner is alleged to have committed or been convicted of two or more distinct offences, it is not necessary for the magistrate to make separate committals (*Re Meunier*, [1894] 2 Q.B. 415).

As to committal under this section for a bankruptcy offence, see *R. v. Governor of Brixton Prison, Ex parte Shure*, [1926] 1 K.B. 127.

Persons under the age of twenty-one must be committed to an institution instead of prison, and the reference in this section to prison must be construed accordingly; see the Criminal Justice Act 1967, s. 34, Vol. 8, p. 599.

See generally 24 Digest (Repl.) 1005.

**Place of committal.** In practice the fugitive criminal is committed to Brixton Prison.

**Warrant for surrender.** For form of warrant for surrender, see Sch. 2, *post*.

**Secretary of State.** See the note to s. 3, *ante*.

**Definitions.** For "fugitive criminal", "extradition crime", "convicted", "police magistrate" and "warrant", see s. 26, *post*.

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**11. Surrender of fugitive to foreign state by warrant of Secretary of State**

If the police magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of Habeas corpus.

Upon the expiration of the said fifteen days, or, or if a writ of Habeas corpus is issued, after the decision of the court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by a Secretary of State, it shall be lawful for a Secretary of State, by warrant under his hand and seal, to order the fugitive criminal (if not delivered on the decision of the court) to be surrendered to such person as may in his opinion be duly authorized to receive the fugitive criminal by the foreign state from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for any person to whom such warrant is directed and for the person so authorized as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign state the criminal mentioned in the warrant, and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

**NOTES**

**Writ of habeas corpus.** For procedure on application, see R.S.C. Ord. 54.

**Expiration of fifteen days.** See s. 3 (4), *ante*.

**Such further period as may be allowed.** As to the exercise of the discretion of the Secretary of State, see *R. v. Governor of Holloway Prison, Re Siletti* (1902), 71 L. J. K.B. 935; and *R. v. Governor of Brixton Prison, Ex parte Perry*, [1924] 1 K.B. 455.

**Competing requisitions.** Where more than one foreign state makes requisition for the fugitive criminal, the claims rank in order of reception (*R. v. Kaur* (1900), Times, 30th April). But if a request is made under the Fugitive Offenders Act 1967, p. 286, *post* (relating to the return of offenders to Commonwealth countries, etc.) and either another request is made under that Act or a requisition is made under this Act, the Secretary of State may give preference to the other request or requisition; see the Fugitive Offenders Act 1967, s. 9 (5), p. 295, *post*.

**Surrender of British subject.** See the "General Note" to s. 5, *ante*. Where the treaty with the foreign state reserves an absolute discretion as to the granting or refusing the surrender of their own subjects by the contracting parties, the discretion in the United Kingdom rests with the Secretary of State (*Re Galwey*, [1896] 1 Q.B. 230).

**Secretary of State.** See the note to s. 3, *ante*.

**Definitions.** For "foreign state", see s. 25, *post*; for "fugitive criminal" and "police magistrate", see s. 26, *post*.

**12. Discharge of persons apprehended if not conveyed out of United Kingdom within two months**

If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after such committal, or, if a writ of Habeas corpus is issued, after the decision of the court upon the return to the writ, it shall be lawful for any judge of one of Her Majesty's Superior Courts at Westminster, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.



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## NOTES

**Fugitive criminal.** For meaning, see s. 26, *post*.**United Kingdom.** See the note to s. 3, *ante*.**Within two months.** The period of two months begins to run from the date of the committal to prison to await surrender on the conclusion of the proceedings before the magistrate, and not from the arrest of the accused under the warrant issued by the magistrate in the first instance (*R. v. Governor of Brixton Prison, Ex parte Mohamed Ben Romdan*, [1912] 3 K.B. 190).**Writ of habeas corpus.** See the note to s. 11, *ante*.**Discharge out of custody.** As to the discretion of the Secretary of State to order the discharge of a fugitive criminal accused of a political offence, see s. 7, *ante*.**Any judge of Superior Courts.** Jurisdiction is now vested in the judges of the High Court and Court of Appeal; see the Supreme Court of Judicature (Consolidation) Act 1925, s. 224, Vol. 7, p. 622.**Secretary of State.** See the note to s. 3, *ante*.

## 13. Execution of warrant of police magistrate

The warrant of the police magistrate issued in pursuance of this Act may be executed in any part of the United Kingdom in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed.

## NOTES

**Form of warrant.** See Sch. 2, *post*.**United Kingdom.** See the note to s. 3, *ante*.**Definitions.** For "justice of the peace" and "police magistrate", see s. 26, *post*.

## 14. Depositions to be evidence

Depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act.

## NOTE

**Admissibility of foreign evidence.** By the Extradition Act 1873, s. 4, p. 270, *post*, affirmations and copies of affirmations taken in the foreign state are also admissible. The depositions are admissible even though not taken in the presence of the accused nor on the charge for which his extradition is sought (*Re Counhaye* (1873), 1 L.R. 8 Q.B. 410), nor in accordance with English rules of evidence, the test of their admissibility being whether the statements they contain establish the facts of the case (*R. v. Gossenheim* (1903), 20 T.L.R. 121).

## 15. Authentication of depositions and warrants

Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows:

- (1) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign state where the same was issued;
- (2) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and
- (3) If the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign state where the conviction took place; and

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if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state: And all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

## NOTES

**Warrant.** This term, in the case of any foreign state, includes any judicial document authorising the arrest of a person accused or convicted of crime (s. 26, *post*).

**Conviction.** This term does not include a conviction abroad for contumacy (s. 26, *post*).

**Authenticated in manner provided by law.** See the Evidence Act 1851, s. 7, Vol. 12, p. 818.

A document produced before a magistrate, which purported to be a copy of the record or minutes of a certain order or decree of the Criminal Court of Justice at the Hague, which was sealed with the seal of the department of justice there, and which set forth the charges against the criminal and authorised proceedings against him and his arrest, was held to be a duly authenticated foreign warrant (*R. v. Ganz* (1882), 9 Q.B.D. 93).

*Crimes committed at Sea*

## 16. Jurisdiction as to crimes committed at sea

Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into any port of the United Kingdom, the following provisions shall have effect:

- (1) This Act shall be construed as if any stipendiary magistrate in England or Ireland, and any sheriff or sheriff substitute in Scotland, were substituted for the police magistrate throughout this Act, except the part relating to the execution of the warrant of the police magistrate;
- (2) The criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime;
- (3) If the fugitive criminal is apprehended on a warrant issued without the order of a Secretary of State, he shall be brought before the stipendiary magistrate, sheriff, or sheriff substitute who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port.

## NOTES

**Aircraft.** This section has effect also where a person's surrender is sought in respect of a crime committed on board an aircraft in flight which lands in the United Kingdom, but as if in para. (3) for the references to the port where the vessel lies there were substituted references to the place at which the person whose surrender is sought is disembarked; see the Tokyo Convention Act 1967, s. 2 (1), Vol. 2, p. 703. By s. 2 (2) of that Act, ss. 17 and 22, *post*, apply to s. 2 (1) thereof as if that subsection were included in this Act.

**United Kingdom.** See the note to s. 3, *ante*.

**Shall be construed as if any stipendiary magistrate, etc.** The jurisdiction conferred on a stipendiary magistrate and a sheriff, or sheriff substitute is in addition to, and not in derogation or exclusion of, the jurisdiction of the police magistrate (see the Extradition Act 1873, s. 6, p. 271, *post*), and is conferred for the purpose of convenience, to obviate the necessity of hearing the case at Bow Street.

**England.** See the note to s. 8, *ante*.

**Ireland.** This refers to Northern Ireland and excludes Eire; see the Irish Free State (Consequential Adaptation of Enactments) Order 1923, S.R. & O. 1923 No. 405.

**Definitions.** For "fugitive criminal" and "police magistrate", see s. 26, *post*.



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*Fugitive Criminals in British Possessions***17. Proceedings as to fugitive criminals in British possessions**

This Act, when applied by Order in Council, shall, unless it is otherwise provided by such order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England, as the case may require, but with the following modifications: namely,

- (1) The requisition for the surrender of a fugitive criminal who is in or suspected of being in a British possession may be made to the governor of that British possession by any person recognised by that governor as a consul general, consul, or vice-consul, or (if the fugitive criminal has escaped from a colony or dependency of the foreign state on behalf of which the requisition is made, as the governor of such colony or dependency:
- (2) No warrant of a Secretary of State shall be required, and all powers vested in or acts authorized or required to be done under this Act by the police magistrate and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the governor of the British possession alone:
- (3) Any prison in the British possession may be substituted for a prison in Middlesex:
- (4) A judge of any court exercising in the British possession the like powers as the Court of Queen's Bench exercises in England may exercise the power of discharging a criminal when not conveyed within two months out of such British possession.

**NOTES**

**General Note.** The operation of this section is not affected by the Counterfeit Currency Convention Act 1935; see s. 6 (5) of that Act, Vol. 8, p. 317.

**United Kingdom.** See the note to s. 3, *ante*.

**England.** See the note to 2. 8, *ante*.

**Prison in Middlesex.** See s. 10, *ante*, and the first note and the note "Place of committal" thereto.

**Application.** This section and s. 22, *post*, apply to the Tokyo Convention Act 1967, s. 2 (1) as if that subsection were included in this Act; see s. 2 (2) of the Act of 1967, Vol. 2, p. 703. By the Genocide Act 1969, s. 3, Vol. 40, title Criminal Law, this section and s. 22, *post*, extend to the provisions of that Act ascending this Act, *i.e.*, s. 2 thereof.

**Definitions.** For "fugitive criminal", "British possession", "governor" and "police magistrate", see s. 26, *post*.

Consul or vice-consul includes any person recognised by the Governor of a British possession as a consular officer of a foreign state (Extradition Act 1873, s. 7, p. 272, *post*).

**18. Saving of laws of British possessions**

If by any law or ordinance, made before or after the passing of this Act by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying this Act in the case of any foreign state, or by any subsequent Order, either

- suspend the operation within any such British possession of this Act, or of any part thereof, so far as it relates to such foreign state, and so long as such law or ordinance continues in force there, and no longer;
- or direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications and alterations, as if it were part of this Act.

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## NOTES

**Definitions.** For "foreign state", see s. 25, *post*; for "British possession" and "fugitive criminal", see s. 26, *post*.

**Effect of constitutional changes.** As to the effect on the operation of orders under this section of constitutional changes in British possessions, see the Indian Independence Act 1947, ss. 6 and 18, Vol. 4, pp. 318, 327, in conjunction with the India (Consequential Provision) Act 1949 and the Pakistan (Consequential Provision) Act 1956, Vol. 4, pp. 330, 331, respectively; the Burma Independence Act 1947, s. 5 (4), Vol. 4, p. 635; the Ceylon Independence Act 1947, s. 1 and Sch. 1, Vol. 4, pp. 281, 283; the Federation of Malaya Agreement 1957, Sch. 1 (embodied in the Federation of Malaya Independence Order in Council 1957, S.I. 1957 No. 1533, made under the Federation of Malaya Independence Act 1957, Vol. 4, p. 368); the Sabah, Sarawak and Singapore State (Constitution) Order in Council 1963, S.I. 1963 No. 1493, made under the Malaysia Act 1963, Vol. 4, p. 374; the Singapore Act 1966, s. 1, Vol. 4, p. 415; the Ghana Independence Act 1957, s. 1 and Sch. 1, Vol. 4, pp. 299, 302, in conjunction with the Ghana (Consequential Provision) Act 1960, s. 1, Vol. 4, p. 305; the Cyprus Act 1960, s. 3, Vol. 4, p. 287; the Nigeria Independence Act 1960, s. 1 and Sch. 1, and the Nigeria Republic Act 1963, Vol. 4, pp. 401, 405, 407, respectively; the Sierra Leone Independence Act 1961, s. 1 and Sch. 2, Vol. 4, pp. 409, 412; the Jamaica Independence Act 1962, s. 1 and Sch. 1, Vol. 4, pp. 333, 336; the Trinidad and Tobago Independence Act 1962, s. 1 and Sch. 1, Vol. 4, pp. 434, 438; the West Indies Act 1962, s. 1, Vol. 4, p. 602; the Kenya Independence Act 1963, s. 1 and Sch. 1, Vol. 4, pp. 339, 345, in conjunction with the Kenya Republic Act 1965, Vol. 4, p. 347; the Gambia Independence Act 1964, s. 1 and Sch. 1, Vol. 4, pp. 292, 297; the Malta Independence Act 1964, s. 1 and Sch. 1, Vol. 4, pp. 382, 385; the Barbados Independence Act 1966, s. 1 and Sch. 1, Vol. 4, pp. 154, 158; the Guyana Independence Act 1966, s. 1 and Sch. 1, Vol. 4, pp. 307, 313; the Aden, Perim and Kuria Muria Islands Act 1967, Vol. 4, p. 693; the West Indies Act 1967, ss. 11 (3) and 14, Vol. 4, pp. 619, 620; the Mauritius Independence Act 1968, s. 1 and Sch. 1, Vol. 4, pp. 388, 391.

**Orders under this section.** Order in Council suspending the operation of the Extradition Acts 1870 to 1935; S.R. & O. 1907 No. 546 (suspended within the Dominion of Canada so long as Part I of the Extradition Act (Rev. S.C. 1906 c. 155) shall continue in force). The Canadian Extradition Act applies to Newfoundland, which became a province of Canada on 31st March 1949.

See also the following Orders in Council incorporating colonial ordinances with the Extradition Acts 1870 to 1935; it must be noted, however, that those territories which have attained fully responsible status have power to amend or repeal the provision made by an Order in Council:

- Ashanti (now Ghana). S.R. & O. 1935 No. 442.
- Australia. S.R. & O. 1904 No. 316; S.R. & O. 1934 No. 917.
- Bahamas. S.R. & O. 1926 No. 974.
- Barbados. 27th November 1878, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 488.
- Bermuda. 4th February 1879, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 489.
- British Guiana (now Guyana). 24th September 1886, S.R. & O. 1897 No. 574, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 489.
- British Honduras. S.R. & O. 1919 No. 1893.
- Ceylon. 4th February 1878, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 495.
- Dominica. S.I. 1948 No. 867.
- Gambia. S.I. 1953 No. 585.
- Gibraltar. 11th July 1877, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 497.
- Gold Coast (now Ghana). S.R. & O. 1935 No. 443.
- Grenada. 18th March 1880, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 500.
- Hong Kong. 20th March 1877, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 501.
- India, Pakistan and Burma. 21st November 1895, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 493; S.R. & O. 1904 No. 317.
- Jamaica. S.R. & O. 1942 No. 1178.
- Kenya. S.R. & O. 1928 No. 902.
- Leeward Islands. S.R. & O. 1947 No. 1018.
- Malaya (Malaysia). 11th July 1877, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 520; S.R. & O. 1923 No. 152.
- Malta. 29th June 1878, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 505.
- Mauritius. 11th July 1877, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 506.
- New Zealand. S.R. & O. 1941 No. 1182.
- Nigeria. S.R. & O. 1918 No. 468.
- North Borneo (Malaysia). 11th July 1877, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 520; S.R. & O. 1923 No. 152 (applying to Labuan; see Letters Patent dated 10th July 1940, S.R. & O. 1940, p. 2349, arts. 1, 10); S.I. 1951 No. 1940.
- Papua and Norfolk Islands. S.R. & O. 1934 No. 917.



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St. Lucia. 15th January 1878, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 512.  
 St. Vincent. 6th September 1880, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 513.  
 Sarawak (Malaysia). S.I. 1948 No. 343.  
 Sierra Leone. 27th November 1878, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 515.  
 Singapore (Malaysia). 11th July 1877, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 520; S.R. & O. 1923 No. 152.  
 Southern Rhodesia. S.R. & O. 1924 No. 1547.  
 Tobago. 28th June 1880, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 523.  
 Trinidad. 11th July 1877, S.R. & O. 1894 No. 543, S.R. & O. Rev. 1948, IX, Fugitive Criminal, p. 522.

See as to these orders, 6 Halsbury's Statutory Instruments, title Criminal Law (Part 2).

*General Provisions***19. Criminal surrendered by foreign state not triable for previous crime**

Where, in pursuance of any arrangement with a foreign state, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act is surrendered by that foreign state, such person shall not, until he has been restored or had an opportunity of returning to such foreign state, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

**NOTES**

**Surrendered by a foreign state.** The onus is on the defendant to show that he was surrendered under extradition law, and should he fail to do so, he will be deemed to have returned voluntarily to answer the charges (*R. v. Corrigan*, [1931] 1 K.B. 527).

**Foreign state.** For meaning, see s. 25, *post*.

**Offence.** This term includes all crimes triable in a criminal court, but does not include disobedience to an order of court in a civil action, punishable by attachment (*Pooley v. Whetham* (1880), 15 Ch.D. 435, C.A.).

**Such of the said crimes.** The crimes referred to are those set out in Sch. 1, *post*. A person extradited on a particular charge may be tried for any other offence which can be proved by the facts upon which the surrender was grounded. Consequently a defendant extradited from France on a charge of false pretences was convicted of fraudulent conversion on the same facts (*R. v. Corrigan*, [1931] 1 K.B. 527). The words "such of the said crimes", etc. are capable of being read and should be read as meaning such of the crimes as may be disclosed by the facts alleged in the extradition proceedings, and further evidence in support of those facts and those crimes may be called before the magistrate in the committal proceedings; see *R. v. Aubrey-Fletcher, Ex parte Ross-Munro*, [1968] 1 All E.R. 90, *per* Lord Parker, C.J., at p. 102.

**20. As to use of forms in second schedule**

The forms set forth in the second schedule to this Act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and in the case of a British possession may be used, *mutatis mutandis*, and when used shall be deemed to be valid and sufficient in law.

**NOTE**

**British possession.** For meaning, see s. 26, *post*.

**21. Revocation, etc., of Order in Council**

Her Majesty may, by Order in Council, revoke or alter, subject to the restrictions of this Act, any Order in Council made in pursuance of this Act, and all the provisions of this Act with respect to the original order shall (so far as applicable) apply, *mutatis mutandis*, to any such new order.

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**22. Application of Act in Channel Islands and Isle of Man**

This Act (except so far as relates to the execution of warrants in the Channel Islands) shall extend to the Channel Islands and Isle of Man in the same manner as if they were part of the United Kingdom; and the royal courts of the Channel Islands are hereby respectively authorized and required to register this Act.

**NOTES**

**Application.** See the note to s. 17, *ante*.

**United Kingdom.** See the note to s. 3, *ante*.

**23. Saving for Indian treaties**

*Nothing in this Act shall affect the lawful powers of Her Majesty or of the Governor-General of India . . . to make treaties for the extradition of criminals with Indian native states, or with other Asiatic states conterminous with British India . . . or to carry into execution the provisions of any such treaties made either before or after the passing of this Act.*

**NOTES**

The words omitted were repealed by the Government of India (Adaptation of Acts of Parliament) Order 1937, S.R. & O. 1937 No. 230, and the Burma Independence Act 1947, s. 5 and Sch. 2, Part I.

**Treaties with Indian States.** As to lapse of treaties, see the Indian Independence Act 1947, s. 7, Vol. 4, p. 318.

**24. Power of foreign state to obtain evidence in United Kingdom**

The testimony of any witness may be obtained in relation to any criminal matter pending in any court or tribunal in a foreign state in like manner as it may be obtained in relation to any civil matter under the Foreign Tribunals Evidence Act, 1856, and all the provisions of that Act shall be construed as if the term civil matter included a criminal matter, and the term cause included a proceeding against a criminal: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

**NOTES**

**Power of foreign state.** For extension of such powers, see the Extradition Act 1873, s. 5, and notes thereto, p. 271, *post*.

**Foreign Tribunals Evidence Act 1856.** See Vol. 12, p. 823. That Act enables those courts or judges, in this country or in the Queen's dominions, to whom authority is given by s. 6 of that Act, to order, on due application being made to them as directed, the examination on oath of any witness within the jurisdiction whose evidence is required by any court or tribunal of competent jurisdiction in a foreign country before which any civil or commercial matter is pending. For procedure on application under that Act as extended by this section, see R.S.C. Ord. 70, r. 2.

**Criminal matter of a political character.** See the note "Office of a political character" to s. 3, *ante*. The words "criminal matter" are synonymous with "criminal proceedings"; see *Re Gross, Ex parte Treasury Solicitor*, [1968] 3 All E.R. 804.

**Northern Ireland.** See also *Re Louis Boeckstael*, [1933] L.J. Ir. 46.

**25. Foreign state includes dependencies**

For the purposes of this Act, every colony, dependency, and constituent part of a foreign state, and every vessel of that state, shall (except where expressly mentioned as distinct in this Act) be deemed to be within the jurisdiction of and to be part of such foreign state.



## ADDENDUM D.

EXTRADITION ACT 1870, S. 26

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## NOTES

**Every vessel of that state.** The court has jurisdiction to make an order although there is no evidence as to the exact position of the vessel at the time of the alleged crime (*R. v. Governor of H.M. Prison, Brixton, Ex parte Minervini*, [1958] 3 All E.R. 318).  
 Cf. the Tokyo Convention Act 1967, s. 2, Vol. 2, p. 703 (aircraft in flight).

## 26. Interpretation

In this Act, unless the context otherwise requires,—

The term "British possession" means any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, the Channel Islands, and Isle of Man; and all colonies, plantations, islands, territories, and settlements under one legislature, as herein-after defined, are deemed to be one British possession:

The term "legislature" means any person or persons who can exercise legislative authority in a British possession, and where there are local legislatures as well as a central legislature, means the central legislature only:

The term "governor" means any person or persons administering the government of a British possession . . .

The term "extradition crime" means a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this Act:

The terms "conviction" and "convicted" do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term "accused person" includes a person so convicted for contumacy:

The term "fugitive criminal" means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty's dominions; and the term "fugitive criminal of a foreign state" means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state:

The term "police magistrate" means a chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan police court in Bow Street:

The term "justice of the peace" includes in Scotland any sheriff, sheriff's substitute, or magistrate:

The term "warrant", in the case of any foreign state, includes any judicial document authorizing the arrest of a person accused or convicted of crime.

## NOTES

The definition omitted was repealed by the S.L.R. (No. 2) Act 1893.

The words omitted from the definition of "governor" were repealed by the Government of India (Adaptation of Acts of Parliament) Order 1937, S.R. & O. 1937 No. 230.

**Extradition crime.** A Commonwealth citizen who has been convicted of an extradition crime within the meaning of this section may be refused admission into the United Kingdom; see the Commonwealth Immigrants Act 1962, s. 2 (4) (b), Vol. 4, p. 29.

**Conviction for contumacy.** This expression describes the French conviction "per contumace" and includes the French "jugement par défaut" but does not include the French "jugement iteratif défaut", which is a final conviction on surrender for which an offender would be sent to prison without further trial; see *Re Caborn-Waterfield*, [1960] 2 Q.B. 498, at p. 510; [1960] 2 All E.R. 178, at p. 182.

**Accused person.** This definition adopts the wording in *Re Coppin* (1866), 2 Ch. App. 47.

**Fugitive criminal.** A foreign criminal resident in this country and while here committing by letter an extradition offence in his own country is a fugitive criminal (*R. v. Nillins* (1884), 53 L.J.M.C. 157). See also *R. v. Godfrey*, [1923] 1 K.B. 24.

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**Police magistrates.** See the Extradition Act 1895, s. 1 (2), p. 273, *post*. References to a metropolitan police court or to a magistrate of the metropolitan police court in Bow Street are to be construed in accordance with the Administration of Justice Act 1964, s. 39 (1) and Sch. 3, Part I, Vol. 20, title London Government.

*Repeal of Acts***27. Repeal of Acts in third schedule**

The Acts specified in the third schedule to this Act are hereby repealed as to the whole of Her Majesty's dominions; and this Act (with the exception of anything contained in it which is inconsistent with the treaties referred to in the Acts so repealed) shall apply (as regards crimes committed either before or after the passing of this Act), in the case of the foreign states with which those treaties are made, in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act, and as if such order had directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this Act.

**NOTES**

The words omitted were repealed by the S.L.R. Act 1883.

**Definitions.** For "British possession", see s. 26, *ante*; for "foreign state", see s. 25, *ante*.

**SCHEDULES**

Sections 19, 26

**FIRST SCHEDULE****LIST OF CRIMES**

The following list of crimes is to be construed according to the law existing in England, or in a British possession (as the case may be), at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act:

Murder, and attempt and conspiracy to murder.  
Manslaughter.  
Counterfeiting and altering money and uttering counterfeit or altered money.  
Forgery, counterfeiting, and altering, and uttering what is forged or counterfeited or altered.

Crimes by bankrupts against bankruptcy law.

Rape.  
Abduction.  
Child stealing.

Arson.

Piracy by law of nations.  
Sinking or destroying a vessel at sea, or attempting or conspiring to do so.  
Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.  
Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.



## ADDENDUM D.

## EXTRADITION ACT 1870, SCH. 2

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## NOTES

The entries omitted were repealed by the Theft Act 1968, s. 33 (3), (4), Sch. 3, Part III. **General Note.** This Schedule may be compared with the Fugitive Offenders Act 1967, Sch. 1, p. 303, *post*.

**England.** See the note to s. 8, *ante*.

**British possession.** For meaning, see s. 26, *ante*.

**Extension of list of crimes.** The following Acts provide that additional crimes are to be deemed to be included in this Schedule:—the Extradition Act 1873, s. 8, p. 272, *post* (crimes listed in the Schedule to that Act); the Slave Trade Act 1873, s. 27, Vol. 37, title Trade and Industry (offences in connection with the slave trade); the Extradition Act 1906, s. 1, p. 274, *post* (bribery); the Extradition Act 1932, s. 1, p. 275, *post* (offences relating to dangerous drugs); the Counterfeit Currency (Convention) Act 1935, s. 4, Vol. 8, p. 310 (attempts to commit offences in connection with counterfeit currency); the Suicide Act 1961, s. 2 (3) and Sch. 1, Part II, Vol. 8, pp. 519, 521 (aiding, abetting, counselling or procuring suicide); the Criminal Law Act 1967, s. 4 (6), Vol. 8, p. 555 (offences in relation to an extradition crime which in England would be an offence under s. 4 (1) of that Act); the Genocide Act 1969, s. 2, Vol. 40, title Criminal Law (any offence of genocide and (so far as not included by virtue thereof) any attempt or conspiracy to commit such an offence and any direct and public incitement to commit such an offence).

## SECOND SCHEDULE

Section 20

*Form of Order of Secretary of State to the Police Magistrate*

To the chief magistrate of the metropolitan police courts or other magistrate of the metropolitan police court in Bow Street [or the stipendiary magistrate at ]

WHEREAS, in pursuance of an arrangement with referred to in an Order of Her Majesty in Council dated the day of , a requisition has been made to me, one of Her Majesty's Principal Secretaries of State, by the diplomatic representative of , for the surrender of , late of , accused [or convicted] of the commission of the crime of within the jurisdiction of

: Now I hereby, by this my order under my hand and seal, signify to you that such requisition has been made, and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of the Extradition Act, 1870, relating to the issue of such warrant, are in your judgment complied with.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this day of 18 .

*Form of Warrant of Apprehension by Order of Secretary of State*

Metropolitan police district, [or county or borough of ] To all and each of the constables of the metropolitan police force [or of the county or borough of ]

WHEREAS the Right Honourable one of Her Majesty's Principal Secretaries of State, by order under his hand and seal, hath signified to me that requisition hath been duly made to him for the surrender of late of accused [or convicted] of the commission of the crime of within the jurisdiction of : This is therefore to command you in Her Majesty's name forthwith to apprehend the said pursuant to the Extradition Act, 1870, wherever he may be found in the United Kingdom or Isle of Man, and bring him before me or some other [\*magistrate sitting in this court], to show cause why he should not be surrendered in pursuance of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at [\*Bow Street, one of the police courts of the metropolis] this day of 18 .

J.P.

\*Note.—Alter as required.

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*Form of Warrant of Apprehension without Order of Secretary of State*

Metropolitan  
police district,  
[or county or  
borough of  
to wit.] } To all and each of the constables of the metropolitan police force  
[or of the county or borough of ]

WHEREAS it has been shown to the undersigned, one of Her Majesty's justices of the peace in and for the metropolitan police district [or the said county or borough of ] that late of is accused [or convicted] of the commission of the crime of within the jurisdiction of : This is therefore to command you in Her Majesty's name forthwith to apprehend the said and to bring him before me or some other magistrate sitting at this court [or one of Her Majesty's justices of the peace in and for the county [or borough] of ] to be further dealt with according to law, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the police courts of the metropolis, [or in the county or borough aforesaid] this day of 18

J.P.

*Form of Warrant for bringing Prisoner before the Police Magistrate*

County [or  
borough] of  
to wit. } To constable of the police force of  
and to all other peace officers in the said county [or  
borough] of

WHEREAS late of accused [or alleged to be convicted of] the commission of the crime of within the jurisdiction of has been apprehended and brought before the undersigned, one of Her Majesty's justices of the peace in and for the said county [or borough] of . And whereas by the Extradition Act, 1870, he is required to be brought before the chief magistrate of the metropolitan police court, or one of the police magistrates of the metropolis sitting at Bow Street, within the metropolitan police district [or the stipendiary magistrate for ]: This is therefore to command you the said constable in Her Majesty's name forthwith to take and convey the said to the metropolitan police district [or the said ] and there carry him before the said chief magistrate or one of the police magistrates of the metropolis sitting at Bow Street within the said district [or before a stipendiary magistrate sitting in the said ] to show cause why he should not be surrendered in pursuance of the Extradition Act, 1870, and otherwise to be dealt with in accordance with law, for which this shall be your warrant.

Given under my hand and seal at in the county [or borough] aforesaid, this day of 18

J.P.

*Form of Warrant of Committal*

Metropolitan  
police district  
[or county or  
borough of  
to wit.] } To one of the constables of the metropolitan  
police force, [or of the police force of the county or borough of  
and to the keeper of the

BE it remembered, that on this day of in the year of our Lord late of is brought before me the chief magistrate of the metropolitan police courts [or one of the police magistrates of the metropolis] sitting at the police court in Bow Street, within the metropolitan police district, [or a stipendiary magistrate for ] to show cause why he should not be surrendered in pursuance of the Extradition Act, 1870, on the ground of his being accused [or convicted] of the commission of the crime of within the jurisdiction of , and forasmuch as no sufficient cause had been shown to me why he should not be surrendered in pursuance of the said Act:



## ADDENDUM D.

## EXTRADITION ACT 1870, SCH. 3

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This is therefore to command you the said constable in Her Majesty's name forthwith to convey and deliver the body of the said into the custody of the said keeper of the at , and you the said keeper to receive the said into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the police courts of the metropolis [or at the said ] this day of 18 .

J.P.

*Form of Warrant of Secretary of State for Surrender of Fugitive*

To the keeper of and to  
 WHEREAS late of accused [or convicted] of  
 the commission of the crime of within the jurisdiction of  
 , was delivered into the custody of you the keeper  
 of by warrant dated pursuant to the Extradition  
 Act, 1870:

Now I do hereby, in pursuance of the said Act, order you the said keeper to deliver the body of the said into the custody of the said to receive the said into your custody, and to convey him within the jurisdiction of the said and there place him in the custody of any person or persons appointed by the said to receive him, for which this shall be your warrant.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this day of

## NOTES

**Police magistrate.** See the note to s. 26, *ante*.

**Warrant of committal.** The form of warrant of committal may be varied where the fugitive criminal may, on grounds of health, be held in custody at a place other than a prison; see the Extradition Act 1895, s. 1 (3), p. 273, *post*.

## THIRD SCHEDULE

Section 27

Year and Chapter	Title
6 & 7 Vict. c. 76 .. ..	An Act for giving effect to a treaty between Her Majesty and the United States of America for the apprehension of certain offenders.
8 & 9 Vict. c. 120 .. ..	An Act for facilitating execution of the treaties with France and the United States of America for the apprehension of certain offenders.
29 & 30 Vict. c. 121 .. ..	An Act for the amendment of the law relating to treaties of extradition.

## NOTE

The entries omitted from this Schedule were repealed by the S.L.R. (No. 2) Act 1893.

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PAGE

- Explosives Act 1875 (c. 17)—continued**
- 228— **Schedule 2**
- 229 Repealed as noted to p. 177, *ante*.
- Revenue Act 1909 (c. 43)**
- 230 **Section 11**  
Repealed by the Explosives Acts 1875 and 1923 etc. (Repeals and Modifications) Regulations 1974, S.I. 1974 No. 1885, reg. 5, but by *ibid.*, reg. 8 (4), existing Orders in Council under this section continue in force.
- Explosives Act 1923 (c. 17)**
- 231 **Section 3**  
Repealed by the Explosives Acts 1875 and 1923 etc. (Repeals and Modifications) Regulations 1974, S.I. 1974 No. 1885, reg. 4. See also *ibid.*, reg. 8, for supplemental provisions.
- Fireworks Act 1951 (c. 58)**
- 232— **Section 1**
- 233 In sub-s. (1) for the words "a government inspector for the purposes of the Explosives Act 1875 (hereinafter referred to as 'the principal Act')" there are substituted "an inspector appointed by the Health and Safety Executive under section 19 of the Health and Safety at Work etc. Act 1974" by the Explosives Acts 1875 and 1923 etc. (Repeals and Modifications) Regulations 1974, S.I. 1974 No. 1885, reg. 6. See also *ibid.*, reg. 8, for supplemental provisions.
- 233— **Section 2**
- 234 In sub-s. (3) for the words "a government inspector" there are substituted "an inspector" by the Explosives Acts 1875 and 1923 etc. (Repeals and Modifications) Regulations 1974, S.I. 1974 No. 1885, reg. 6.
- 235 **Section 4**  
For the references in sub-ss. (1) and (3) and the first two references in sub-s. (2) to the Secretary of State there are substituted references to the Health and Safety Executive, and for the words in sub-s. (2) "any such notice as he might serve" there are substituted "any such notice as the Secretary of State may serve," by the Explosives Acts 1875 and 1923 etc. (Repeals and Modifications) Regulations 1974, S.I. 1974 No. 1885, reg. 6. See also *ibid.*, reg. 8, for supplemental provisions.
- Emergency Laws (Miscellaneous Provisions) Act 1953 (c. 47)**
- 240— **Section 3**
- 241 By the Explosives Acts 1875 and 1923 etc. (Repeals and Modifications) Regulations 1974, S.I. 1974 No. 1885, reg. 7 (1), in sub-s. (4) for the words from "liable" to the end of the subsection there are substituted "guilty of an offence", and at the end of the section there is added the following subsection:  
"(6) The provisions of section 50 of the Health and Safety at Work etc. Act 1974 shall apply to the power to make an order under this section as they apply to a power to make regulations."  
See also *ibid.*, reg. 8, for supplemental provisions.
- 241 n. *Orders under this section.* The Control of Explosives Order 1953, S.I. 1953 No. 1598, is further amended by S.I. 1974 No. 1885.
- Fireworks Act 1964 (c. 23)**
- 242 *No change*

## EXTRADITION AND FUGITIVE OFFENDERS

(FOR MAIN TITLE, SEE VOLUME 13, pp. 245-303)

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- Preliminary Note**
- 245 *Extradition by this country and Commonwealth Countries to a foreign State.* The list of crimes for which extradition can be demanded is extended by the Misuse of Drugs Act 1971, s. 33, Vol. 41, p. 908.

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REVISIONS



## ADDENDUM D.

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**Extradition Act 1870 (c. 52)**

- 249 Extended by the Hijacking Act 1971, s. 3 (3), Vol. 41, p. 103.  
*Political character.* See the note to pp. 252-253 n., *post*.

250 **Section 2**

For power to extend this section by Order in Council, see the Hijacking Act 1971, s. 3 (2)-(4), Vol. 41, p. 103, and the Protection of Aircraft Act 1973, ss. 5 (2)-(4), 28 (3), Vol. 43, pp. 25, 49.

- 250- *Orders under this section. Austria.* See now the Austria (Extradition)  
 252 n. Order 1970, S.I. 1970 No. 1111.

Add: The Extradition (Genocide) Order 1970, S.I. 1970 No. 147; the Extradition (Tokyo Convention) Order 1971, S.I. 1971, No. 2103, as amended by S.I. 1972 No. 960 (adding the countries of Argentina and Paraguay (22nd May 1889 and 12th September 1908, respectively) to Sch. 1) and S.I. 1973 No. 762; the Extradition (Hijacking) Order 1971, S.I. 1971 No. 2102, as amended by S.I. 1972 No. 1102, made under this section and s. 17 of this Act as extended by the Hijacking Act 1971, ss. 3 (2), 6 (1); the Austria (Extradition) (Extension) Order 1972, S.I. 1972 No. 1581.

Art. 3 of and Sch. 2 to S.I. 1971 No. 2102 apply the Extradition Acts 1870 to 1935 under and in accordance with the extradition treaties dated as mentioned below, as supplemented by paras. 1 and 4 of Art. 8 of the Convention for the Suppression of Unlawful Seizure of Aircraft (set out in Sch. 1 to the Order), to the following countries:

Ecuador (20th September 1880)  
 Hungary (3rd December 1873)  
 Israel (4th April 1960)  
 Norway (26th June 1873)  
 Sweden (26th April 1963)  
 Switzerland (26th November 1880 and 19th December 1934)  
 U.S.A. (22nd December 1931).

Sch. 2, is amended by S.I. 1972 No. 1102 by the addition of Chile, Finland, Paraguay, Iraq, and Poland and by S.I. 1974 No. 1107 by the addition of Argentina, Austria, Belgium, Colombia, Czechoslovakia, Denmark, Iceland, El Salvador, France, Yugoslavia, Greece, Mexico, the Netherlands, Nicaragua, Panama, Portugal, Romania and Spain.

Art. 4 of and Sch. 3 to the 1971 Order apply the Acts of 1870 to 1935 in relation only to offences under the Hijacking Act 1971 and attempts to commit such offences to the following countries: Bulgaria, Costa Rica, Gabonese Republic, Japan, Jordan, Mali, Mongolia, Niger, U.S.S.R.

The 1971 Order is amended by S.I. 1972 No. 1102, by adding the following countries to the list under Sch. 3 mentioned in the preceding paragraph: Brazil, Byelorussia, Iran and Ukraine, and by S.I. 1974 No. 1107 by the addition of Chad, Dahomey, Ivory Coast, the Republic of Korea, Lebanon, Pakistan, the Philippines, South Africa and Turkey.

Art. 5 of and Sch. 4 to the Order extend the application of the Convention to the following territories: Bahamas, Bermuda, British Antarctic Territory, British Honduras, British Indian Ocean Territory, British Solomon Islands Protectorate, British Virgin Islands, Cayman Islands, Central and Southern Line Islands, Falkland Islands (and Dependencies), Gibraltar, Gilbert and Ellice Islands Colony, Hong Kong, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St. Helena (and Dependencies), Seychelles, Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands. Art. 5 of the Order also limits the operation of the Order to the United Kingdom, the Channel Islands, the Isle of Man and the territories listed above.

The Extradition (Protection of Aircraft) Order 1973, S.I. 1973 No. 1756. Art. 3 of, and Sch. 2 to, the 1973 Order apply the Extradition Acts 1870 to 1935, as amended, under and in accordance with the extradition treaties dated as mentioned below, as supplemented by paras. 1 and 4 of Art. 8 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (set out in Sch. 1 to the Order), to the following countries:

Czechoslovakia (11th November 1924)  
 Denmark (31st March 1873)  
 Finland (30th May 1924)

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## Extradition Act 1870 (c. 52)—continued

## Section 2—continued

- 250- Hungary (3rd December 1873)  
 252 n. Iceland (31st March 1873)  
 Israel (4th April 1960)  
 Netherlands (26th September 1898)  
 Norway (26th June 1873)  
 Panama (25th August 1906)  
 Portugal (17th October 1892)  
 Spain (4th June 1878)  
 Sweden (26th April 1963)  
 United States of America (22nd December 1931)  
 Yugoslavia (6th December 1900)

Sch. 2 is amended by S.I. 1974 No. 1108, adding Argentina, Austria and Nicaragua.

Art. 4 of and Sch. 3 to the 1973 Order apply the Acts of 1870 to 1935, as amended, in relation only to offences under the Protection of Aircraft Act 1973, Part I, and attempts to commit such offences to the following countries: Brazil, Bulgaria, Cameroon, Chad, German Democratic Republic, Iran, Ivory Coast, Jordan, Republic of Korea, Mali, Mongolia, Niger, Philippines, South Africa, U.S.S.R.

Sch. 3 is amended by S.I. 1974 No. 1108 by the addition of Pylorussia, Costa Rica, the Dominican Republic, Pakistan and Ukraine.

Art. 5 of and Sch. 4 to the 1973 Order extend the application of the Convention to the following territories: Belize, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands (Colony and Dependencies), Gibraltar, Gilbert and Ellice Islands Colony, Hong Kong, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St. Helena (Colony and Dependencies), Seychelles, Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands. Art. 5 of the Order also limits the operation of the Order to the United Kingdom, the Channel Islands, the Isle of Man and the territories listed above.

## Section 3

- 252- Offence of political character. The offence of genocide or any attempt,  
 253 n. conspiracy or incitement to commit such an offence is not to be regarded as an offence of a political character for the purposes of this Act, by the Genocide Act 1969, s. 2 (2), Vol. 40, p. 388.

The offence must be of a political character as between the prisoner and the state requesting his extradition; see *R. v. Governor of Pentonville Prison, Ex parte Tzu-Tsai Cheng*, [1973] A.C. 931; [1973] 1 All E.R. 935; affirmed, [1973] A.C. at p. 938; [1973] 2 All E.R. 204, H.L.

- 253 n. By arrangement. See *Royal Government of Greece v. Governor of Brixton Prison*, [1971] A.C. 251; [1969] 3 All E.R. 1337, H.L. (treaty obligation that fugitive would not be detained or tried for another offence on return to Greece—whether “arrangement” and whether court would presume that a foreign government would honour obligation).

## Section 9

Legal aid. See the Legal Aid Act 1974, ss. 28 (1), (2), 29, 30 (2), (5), (10)-(12), 43 (5), Vol. 44, pp. 127, 129, 130, 142.

## Section 10

- 257 n. Committal to prison. See also *Atkinson v. United States Government*, [1969] 3 All E.R. 1317, H.L.; and *Royal Government of Greece v. Brixton Prison Governor*, [1971] A.C. 251; [1969] 3 All E.R. 1337, H.L., both noted to p. 258 n., post.

## Section 11

- 258 n. Secretary of State. See *Atkinson v. United States Government*, [1971] A.C. 197; [1969] 3 All E.R. 1317, H.L., per curiam at 1322, 1325, 1334-1335 (the Secretary of State has power under this section to refuse to surrender a man committed to prison by a magistrate and this power could be exercised whenever it would be wrong, unjust or oppressive to surrender the man); followed in *Royal Government of Greece v. Brixton Prison Governor*, [1971] A.C. 251; [1969] 3 All E.R. 1337, H.L. (natural justice not a relevant consideration for committing magistrate).

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## ADDENDUM D.

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**Extradition Act 1870 (c. 52)—continued****261 Section 17**

Saved by the Children and Young Persons Act 1969, s. 60 (2), Vol. 40, p. 920.

This section and s. 22 extended by the Genocide Act 1969, s. 3 (1), Vol. 40, p. 386, the Hijacking Act 1971, s. 6 (1), Vol. 41, p. 104, and the Protection of Aircraft Act 1973, s. 27 (1), Vol. 43, p. 48.

**Section 18**

262— *Orders under this section.* Add: Akrotiri and Dhekelia (Sovereign  
263 n. Base Areas). S.I. 1970 No. 818.

**264 Section 22**

See the second note to p. 261, *ante*.

**Section 26**

265 n. *Conviction for contumacy.* See also *Athanassiadis v. Government of Greece*, [1971] A.C. 282; [1969] 3 All E.R. 293, H.L. (meaning of "conviction for contumacy" discussed at pp. 301-303).

**266 Schedule 1**

Extended to include the offence of genocide and any attempt, conspiracy or incitement to commit such an offence, by the Genocide Act 1969, s. 2 (1) (a), Vol. 40, p. 388.

Extended to include offences of the kind described in the Children and Young Persons Act 1933, s. 1, and the Indecency with Children Act 1960, s. 1, by the Children and Young Persons Act 1969, s. 60 (1), Vol. 40, p. 919.

Extended by the Misuse of Drugs Act 1971, s. 33, Vol. 41, p. 908.

The word "Arson" repealed by the Criminal Damage Act 1971, s. 11 (8), Sch., Part III, Vol. 41, pp. 418, 422.

Extended by the Hijacking Act 1971, s. 3 (1) (a), Vol. 41, p. 418, and the Protection of Aircraft Act 1973, ss. 5 (1), 28 (3), Vol. 43, pp. 25, 49.

**Extradition Act 1873 (c. 60)****271 Section 5**

*Political character.* The offence of genocide or any attempt, conspiracy or incitement to commit such an offence is not to be regarded as an offence of a political character for the purposes of this Act, by the Genocide Act 1969, s. 2 (2), Vol. 40, p. 388.

**272— Schedule**

273 Amended by the Criminal Damage Act 1971, s. 11 (4), Vol. 41, p. 418. The entry relating to the Theft Act 1968 repealed in part by the Statute Law (Repeals) Act 1973, ss. 1 (1), 2, Sch. 1, Part V, Vol. 43, pp. 1381, 1382.

**Extradition Act 1895 (c. 33)**

273 *No change*

**Extradition Act 1906 (c. 15)**

274 *No change*

**Backing of Warrants (Republic of Ireland) Act 1965 (c. 45)****277 Section 2**

In sub-s. (3), in line 1, the words "in the case where" should read "In any case where"

278 n. *Correspond with any offence.* *Re Arkins*, cited, approved in *R. v. Brixton Prison Governor, Ex parte Keane*, [1970] 3 All E.R. 741 (no requirement under the Act for an inquiry whether a *prima facie* case has been made out) affirmed *sub nom. Keane v. Governor of Brixton Prison*, [1972] A.C. 204; [1971] 1 All E.R. 1163, H.L.

*Offence of a political character.* The offence of genocide or any attempt, conspiracy or incitement to commit such an offence is not to be regarded as an offence of a political character for the purposes of this Act, by the Genocide Act 1969, s. 2 (2), Vol. 40, p. 388.

*Sub-s. (2) (b).* See *Keane v. Governor of Brixton Prison*, cited in the second note above (construction of this paragraph).

UNITED STATES COURT OF APPEALS  
For the Second Circuit

United States of America,

Appellee,

**AFFIDAVIT  
OF SERVICE**

against

Jackson D. Leonard,

Defendant-Appellant.

On Appeal From the United States District Court  
For the Southern District of New York

STATE OF NEW YORK,  
COUNTY OF NEW YORK, ss.:

Charles Tynch, being duly sworn, deposes and says that he  
is over the age of 18 years, is not a party to the action, and resides  
at 2189 Pitkin Avenue, Brooklyn, New York  
That on July 27, 1976, he served two copies of the brief  
and one the Appendix  
on

Robert Fiske, Esq.  
United States Attorney for the  
Southern District of New York  
Attorney for Appellee  
Foley Square  
New York, New York

by delivering to and leaving same with a proper person or persons in  
charge of the office or offices at the above address or addresses during  
the usual business hours of said day.

*Charles Tynch*  
.....

Sworn to before me this  
27th day of July, 1976

*John V. Desposito*  
JOHN V. DESPOSITO  
Notary Public, State of New York  
No. 30-0932350  
Qualified in Nassau County  
Commission Expires March 30, 1977